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Thesis

THE WAR-TIME ACTIVITIES AND EMERGENCY POWER OF THE GOVERNORS OF MASSACHUSETTS FROM 1780-1943

by

Thomas Gerard Costello
(B.S., Boston University, 1941)
submitted in partial fulfilment of the
requirements for the degree of
Master of Arts
1943

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INTRODUCTION

The subject matter of this paper revolves around the office of the governor of the Commonwealth of Massachusetts at a time when the state is confronted with problems arising out of a war in which the United States is engaged.

There have been four periods in the history of the state since 1780 in which governors have been confronted with such conditions. In all of these periods they have been given statutory power of an emergency nature to act in a manner which is beyond the ordinary. Some governors have had civilian bodies help them execute their policies. This paper deals with these bodies and statutes in the periods chronologically: The Revolution, the Civil War, World War I and World War II. Greater emphasis is placed upon the present crisis than that placed on earlier times.

The method used in gathering the material for this paper consisted in an examination of the histories of the state and the nation in the respective periods, of the Acts and Resolves of the Commonwealth, lives of various governors, Attorney-General's Reports, Court Reports, Committee Reports, and many other documents. Some of the material on the present crisis was secured by interviews with responsible persons.

Note:

Footnotes are indicated by the author's last name and the page number of the work quoted followed by a reference number showing the sequence of the work as expressed in the bibliography at the end of the paper; for example, Lyman, p. 12 Ref. IX.

CHAPTER I

THE DAYS OF THE AMERICAN REVOLUTION AND THE STATE CONSTITUTION OF 1780

An integral part of the American-Constitutional system, both in the federal and state levels, is the division of powers theory which is very nicely stated in the following article of the Constitution[1] of Massachusetts:

> "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

Upon a closer examination of the executive branch of our state governments it will be observed that the various constitutions call for a division in the exercise of responsibility and power.

The nominal "chief executive magistrate"[2] is the governor who shares this branch with elected officials who are the heads of various executive departments.[3] Being constitutionally created, and elected; either by the people or the popular branch of the government, they are independent of the governor and his policy.

This pluralism in the executive branch has weakened the position of the governor and there is no doubt that this was originally done with a purpose. Any reader of early American History knows the differences of opinion and action that existed between the colonial assemblies and governors.

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1 Constitution of Massachusetts, Part I, Art. 30
2 As used in the Massachusetts Constitution
3 Attorney-general, secretary of the state, auditor, and treasurer as found in the Massachusetts Constitution.

The governors received their appointment to office by a power outside the colony, and thus felt duty bound to it. The assemblies, on the whole, were elected by popular vote varying of course with the degree of suffrage which depended upon local conditions.

The American Revolution gave the colonies their chance to remedy this situation. In drawing up their respective constitutions for the new governments, the colonists as a whole intended to weaken the position of the executive branch. As to the degree in which the various states did this, I am not interested. In general it can be said that the colonies limited this branch by breaking it up into various departments with a governor in name only. Some states established a multiple[4] or dual executive, and others gave the governor a council to share responsibility with him in the exercise of the veto and the power of appointment.[5]

In the struggle that ensued immediately prior to the revolution between the legislative assembly and the royal governor over his salary and that of the provincial judges, there was created by the colonists bodies or organizations known as "committees of correspondence". They were found in every town, with a central committee in Boston.[6]

They were the first executive bodies of the revolutionary

****

4 House Documents, Vol. 9, p. 3084, Ref. VII
5 Ibid Vols. 3,p. 1901 & Vol. 4, p.2464
6 Nevins, p. 31, Ref. X

governments. These committees were used for the dissemination of information as to the movement and activity of the British enemy. They organized the citizens against her and in the towns they busied themselves in drawing up lists of the acts of parliament which she, England, must repeal and the position from which she must recede.

This system of committees was afterwards adopted and used by the other revolting colonies. Much of the actual work of running the revolution was carried on by them; for example, the promulgation of arguments, encouragement of revolutionary ideas, party discipline and suppression or exile of loyalists. In short they did a great deal that was of a governmental nature during the revolution up to the establishment of the state constitution. These committees were known by various names depending upon the locality in which they were found.[7]

Some of these names were Committees of Safety, Committees of Sixty, Committees of One Hundred, Town Committees, Precinct Committees Committees of Inspection, and Committees of Observation.[8]

In Massachusetts the central committee was known as the Committee of Safety and was appointed by the Provincial Congress, 1774.

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7 Idem.
8 Idem.

It drew up plans for the organization of the militia and was the most important arm of the Provincial Congress in administering affairs. Its most notable members were John Hancock and Dr. Warren.

> "In its hands were placed the direction of enlisting men, the care of military supplies, and the guarding of suspicious persons. Twice during the spring its powers were enlarged, while its membership was increased from nine to thirteen..... This small body was expected to summon and control all armed forces, to look after the equipment of the soldiers, and for the time being, to commission the officers."[9]

These committees carried on many functions that today would be carried on by the military as well as the civil branches of the government. John Hancock was elected the first governor under the Constitution of 1780 and the greatest problem that faced the governor was the continued prosecution of the war. Under the constitution, the governor had the constitutional power[10]

> "--for the special defense and safety of the commonwealth, to assemble in martial array, and put in war-like posture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, repeal, resist, expel, and pursue, by force of arms, as well by sea as by land, within or without the limits of this commonwealth, and also to kill, slay, and destroy, if necessary, and conquer, by all fitting ways, enterprises, and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this commonwealth;--"

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9 Nevins, p.69, Ref. X

10 Constitution of Massachusetts, Article VII, Sec. I, Ch. II

The general-court in its first session adopted the following act:[11]

> "Resolve for not augmenting the powers of the governor and council beyond the powers delegated to them by the constitution.
>
> "The Committee of both houses appointed to examine the constitution of the Commonwealth, to see what powers the governor and coundil are vested with during the recess of the General Court, have attended that service and report as their opinion, that it is not necessary to augment the powers of the governor and council, beyond the powers delegated to them by the Constitution of this Commonwealth."

But due to the uncertain condition of the war, the General Court decided to augment the powers of the Governor and council so they could act when it was not in session by the enactment of the following law:[12][13]

> "Resolve Empowering the Governor, with the advice of the council, to adopt such measures in the recess of the General Court, as shall be deemed necessary for the defense of the eastern parts of this Commonwealth, and granting six thousand dollars, new emmission, for said purpose.
>
> "Whereas, in the present critical situation of the three eastern counties of this Commonwealth, it is necessary that extraordinary powers should be vested in the governor and council, in the recess of the General Court: Therefore
>
> "Resolved, That the Governor be, and he is hereby empowered and requested, by and with the advice of council, to adopt such measures during the recess of the General Court, as he may deem necessary for the defense of the Eastern parts of this Commonwealth:

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11 Acts of 1780, Chapter 105, October Session
12 Between October 1780 and January 1781
13 Acts of 1780, Chapter 247, January Session

"For which purpose, it is further

> Resolved; That the governor be, and he is hereby empowered, with advice of council, to draw out of the treasury of this Commonwealth, a sum not exceeding $6000 of new emission, part of the sum of $20,000 ordered to be borrowed by the resolves of the second instant, and that the governor be requested to give order that the account of the expenditure of the money he may draw out of the treasury in consequence of this resolution, be laid before the general court for examination."

What motivated the general-court to pass this act is not clear. The fighting was centered in the South, and Massachusetts territory had not been the scene of a battle since the first days of the war. It may have been due to the success of the British general Cornwallis in the South and the increasing state of exhaustion that was overtaking the colonials. The French had sent a fleet and an army that arrived in Newport, Rhode Island, July, 1780, to help the coming American offensive. The presence of this force so near to Boston and the possibility it would engage the British who were in New York no doubt was a factor in creating the critical situation in the eastern part of the state which is mentioned in the law.

The American offensive in the South was a success and Cornwallis surrendered October 17, 1782. Washington returned to watch the British at New York in 1782 and the French army returned to Newport. Peace came in 1783 without any further fighting.

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The constitutional provision would in itself seem to delegate sufficient enough authority for the governor to take any action in defense of the Commonwealth. Hancock, who was the governor during this period, was fortunate in that he exercised complete control[14] over the political forces of the state and could have easily had his way. He may have felt a reluctance to exercise such authority without statutory approval from the general-court. As to what was actually done under this law is not revealed. However, it was there for the governor to act in the case of an emergency, and it must be noticed only when the general-court was not in session. Whether he could have taken action without such legislation is a matter of speculation.

Neither the War with England in 1812 nor that with Mexico in 1846 caused a situation in Massachusetts that was met with emergency action by either the governor or the general-court.

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14 Nevins, pp. 213-215, Ref. X

CHAPTER II

GOVERNOR ANDREW AND THE CIVIL WAR (1860-1865)

The controversy between the states of the North with those of the South over the question of slavery, which was finally settled by a civil war, was the first real emergency that confronted the state government since the days of the revolution.

The Commonwealth of Massachusetts was fortunate to have as its supreme executive magistrate, John A. Andrew, a man with a forcible character and a determination to meet any crises.[1]

After his election in the Fall of I860, he visited the city of Washington on party business. It was while he was there that he sized up the situation as it then existed between the North and the South. Among the many things that he learned was that the South meant and was prepared to fight.[2] This of course he knew would mean war because the North would not stand idly by. From his position as a chief executive he could only see as his line of action the quite preparation of the state for war and the avoidance of every act that might put upon the North the odium of begining the war. From Charles Francis Adams, who was in Washington, he received much information on the development of the trouble, and much advise as to what action he should take.

In his inaugral address of January, I86I, Andrew gave vent to his feelings and promised that Massachusetts would go to any length to preserve the Union.

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I Weeden pp. 63, 207 Ref. XII
2 Ibid

> "At the end of January Andrew again received warning that Washington was in danger. So serious did he believe the peril to be that he took vigorous action at once.... He obtained from the legislature an emergency appropriation of $100,000; and a war council of military experts summoned by him forwith, approved plans for the purchase of overcoats, blankets and knapsacks to the number of two thousand."[3]

The above mentioned war council was the only organization created by the governor to help him formulate and carry out a war policy. He often had conferences with officals and civilians. They were not summoned as a body or known by any name such as those found in later periods of the State's history.

By the first of April, 1861, the governor had the first of his military preparations completed. He had the state militia filled with young men. He had also received the authority to enlist companies, if necessary, over and above the maximum of five thousand allowed by law. The contracts for the overcoats mentioned above had been given out. Some of the other things that he did during this early period are as follows;

> "He cooperated with other northern states in opening a route to Washington and in making it secure; he put militia garrisons into the forts in Boston harbor; he sent military equipment to Maine; he sent an agent with a credit of 50,000(pounds sterling) to Europe to obtain arms. He was even obliged to purchase two steamers to take Massachusetts regiment at Washington and Fortress Monro the provisions which the Federal government was unable to supply."[4]

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3 Hart(Pearson) Vol. IV,P.510 Ref. VI
4 Ibid p.505

The question whether the governor could do all these things under his constitutional power as supreme executive magistrate and commander-in-chief of the Commonwealth was not raised. If a broad construction of Article VII of Section I, Chapter II of the constitution is allowed, it could no doubt be argued that he had the power. However, on the twenty-first day of May, 1861, an act was passed by the general-court entitled, "AN ACT TO PROVIDE FOR THE MAINTENANCE OF THE UNION AND THE CONSTITUTION."[5] It approved all the actions of the governor which he had taken with the approval of the council in contracts, agreements, and expenditures made. It also gave him the authority with the approval of his council:

> "To take such measures as may be deemed best to provide for the arming, equipping and disciplining, and for the transportation and subsistence of so much of the military force of the Commonwealth as may be in his judgment needed for defending, sustaining, and maintaining in its full integrity the authority of the United States and the constitutional and laws thereof."[6]

He was also given the power to:

> "Appoint and commission officers and agents and fix their pay and rank, to settle all questions arising between the United States and the Commonwealth; to pay any troops of the State called into service and arrange with the general government for the reimbursement of the outlay."[7]

The governor had many disagreements with Benjamin F. Butler, who was the Major-General commanding the newly organized departments of New England, over the question of raising troops and

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5 Acts of 1861, Chapter 216 Extra Session
6 Idem
7 Idem

commissioning officers. Congressional approval had been given to the system of recruiting regiments through the governors of the several states. The act provided for the organization of volunteers and declared that the governors were to commission the field, staff, and line officers of regiments, but that when the state authorities refused or did not send such troops, the commissions were to be signed by the President of the United States.[8]

Butler attempted to organize regiments and appoint their officers. Andrew refused to sign their commissions. After much bickering, Andrew finally got the ear of Washington and had the department of New England abolished and the actions of Butler voided.

The Union Defense Act was supplemented on the same day by another act[9] entitled, "AN ACT IN ADDITION TO AN ACT TO PROVIDE FOR THE MAINTENANCE OF THE UNION AND THE CONSTITUTION." It provided that in order to help the Federal government, the governor, with council approval, may direct the treasurer and receiver-general to issue debt bonds or script in the name of the state when the general-court is not in session. The total amount was not to exceed $7,000,000 and is payable at such times and with such interests as the governor and his council approve. The interest is not to exceed 6%, and the currency is payable in

****

8 Acts of the XXXVII Congress, Chapter IX, Section 4, July 1861.
9 Acts and Resolves of 1861, Chapter 217, Extra Session

either London or Boston and may be expressed in the forms of the currency of either Great Britain or the United States.

There was still another act[10] with the same title as the above. It was approved the next day and called for the governor with the approval of his council:

> "To pay out of the Union Fund any of the troops of this Commonwealth, which have been mustered into the service of the United States during the time which elapsed from their reporting themselves for service, in pursuance of the order of the governor and at the time when they were actually mustered into the service of the United States; such pay shall be the same as that of the same troops in the service of the United States."

He was also allowed to pay the same to Chaplins who had been or were to be mustered into Federal service.

As the war went on, the Federal government took a more direct control in the recruiting of men for the army; although, much freedom of action still rested in the hands of the governor.

Andrew spent much energy in bringing men from Europe to enlist in the Massachusetts regiments and in organizing colored regiments. There were some riots caused by the drafting of men, but Andrew met these with force and broke their spirit. Considerable time was spent in drawing up the rolls of the Massachusetts men who were in Federal military service.

The actual war activities of the governor which come under the heading of war-time or emergency actions were confined to

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10 Ibid, Chapter 218

the military and its preparedness.

The war was brought to a close in 1865 without any further action other than that related above.

The conclusion that one might draw from this chapter is that the governor did not question whether he had the authority to act. He just went ahead and prepared the state, keeping very close to the military needs. The general-court approved the action he had taken, and then it gave him the statutory power to prepare the militia. It decided also to give him power to control a certain aspect of the state finances as a military measure.

CHAPTER III

THE WAR OF 1917

The creation of a Massachusetts Committee on Public Safety was the answer of the governor, Samuel W. McCall, to the tension that existed due to the breaking of diplomatic relations by the United States with Germany in 1917.

The impetus for the establishing of such a committee came from two important citizens of the state - James J. Storrow and Charles W. Weed.[1] It was first called together as a provisional committee on February 10, 1917. The Massachusetts Committee on Public Safety was to be composed of a hundred citizens which when they met were to be known as the "Committee of a Hundred". Their first meeting as such was on the fourteenth of February, 1917. At this meeting the governor stated the purpose for the organization of such a committee. He said;[2]

> "My difficulty in selecting this committee was rather one of exclusion than of selection, because in considering the make-up of such a citizens committee in the Commonwealth one finds a splendid wealth of material. What I tried to do was to get one hundred of the best men in the State, with a special idea of their fitness for the work, and representative as a body of the different interests, the different lines of industry, and the different elements of our citizenship, so that it would stand as representative of the whole Commonwealth.
>
> "I had an idea that it was well to have a committee of this character consider those problems that grow out of our present delicate international relations, and give to the Commonwealth, and through it to the country, the benefit of its advice, and, if necessary, of its action. I did not appoint the Committee with the idea that war was probable. I am expressing no opin-

****

1 Lyman, p. 3. Ref. IX
2 Lyman, p. 6, and Long, pp. 169-170. Ref. IX

> "ion upon that point. But I think we will all agree that war is at least possible; and as it is possible it behooves us to do what we can to get the Commonwealth of Massachusetts where it may, as it always has in time of national crises, respond very quickly to any call from the Nation."

On this same day the "Committee of a Hundred" elected an executive committee which was really an extension of the provisional committee previously appointed by the governor. This executive committee was to be the directing unit of the whole organization and was composed of twenty-five members, with James J. Storrow as chairman and Charles F. Weed vice-chairman. Henry B. Endicott was elected executive manager with eight assistants.

The "Committee of a Hundred" met only three times as such after this meeting.[1] The work of the Massachusetts Committee on Public Safety was done through a system of sub-committees whose membership came both from the Committee and the general public.

These sub-committees were:[2]

Finance
Coordination of Aid Societies
Industrial Survey
Transportation
Hygiene, Medicine and Sanitation
Federal and State Legislation
Food Production and Conservation
Publicity
Land Forces
State Protection
Naval Forces
Military Equipment and Supplies
Emergency Help and Equipment
Mobilization and Concentration Camps
Horses
Trucks and Motor Cars
Recruiting
Home Guards

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1 March 17, 1917; December 6, 1917; November 20, 1918.
2 Lyman pp. 12,537-541 Ref. IX

Lyman says that these sub or preparatory committees were:

> "Created primarily to meet exigencies arising during the interval between peace and the anticipated war. Although one or two of them were later discontinued, as overlapping or unnecessary to the general plan, the demands on others after the United States became an active belligerent often changed materially in character from their original purpose, or were absorbed in the broader activities and functions of the State or Nation.[1]"

Continuing, he goes on to say:

> "They also greatly assisted in concluding satisfactory and co-operating relations with the rest of New England and with sister States, and eventually with the Council of National Defense at Washington. Each unit, though formed on the same pattern, was independent in itself, working in conformity with the requirements of its local conditions, yet always within the scope of the general scheme. Together they constituted a powerful aggregate, striving in patriotic accord to do their full share towards the attainment of a single generic purpose."[2]

To indulge in a detailed analysis of the work of these committees would be beyond the bounds of this paper. They took part in almost every activity relating to the prosecution of the war. I will describe the organization and work of one or two of these committees and speak in general of the rest.[3]

First, the Committee on Emergency Help and Equipment is best described in Lyman's report:[4]

> "Yet in the judgment of the Executive Committee, an efficient local defense called not only for properly equipped Guards to prevent or repel attack, but that the resultant evil incident to any such misadventure might be quickly remedied. With this in view, and in order to have men, material and equipment ready for re-

****

1 Lyman p. 12 Ref. IX
2 Ibid p. 13 Ref. IX
3 Hart Vol. V, pp. 605,617,625,626,627,629 Ref. VI
4 Lyman pp. 49-50

"construction work, a Committee on Emergency Help and Equipment was formed. Beginning February 24 this Committee organized the construction and material men of the State, so that all building agencies throughout the Commonwealth might be available for immediate service. A sub-committee was appointed, with Mr. Gow as chairman, and an executive board, who divided the State into five geographical sections, each under its own district chairman. Mr. E.S. Larned, a well-known civil engineer, was employed, at the personal expense of members of the sub-committee, to act as secretary and organizer, and he gave his entire time for several months to the duties involved. Through his efforts and those of the district chairmen, every contractor and supplier of building material in the Commonwealth, signed a pledge to furnish labor, materials, and equipment, without profit, at the call of his district chairman. Local chairmen were designated for each city and larger town, in order that a responsible officer might be quickly available in localities where trouble arose. In addition, instructions were given to the local authorities, railroad companies and heads of commissions as to the course of procedure when action on their part became necessary."

The full strength of this sub-committee was never fully utilized. However, it did many things; such as, the repair of the chief power unit at the Springfield Armory.[1] It also supplied the Ninth Regiment stationed at the Watertown Arsenal,[2] and it helped to build the Squantum Aviation School.[3] It secured the salvage for the school when the site was taken over by the Federal Government.[4] It built a sewerage and a water system, plus other accommodations, for the Ninth Regiment when it was encamped at South Framingham.[4]

****

1 Lyman p. 50 Ref. IX
2 Idem.
3 Ibid. p. 51
4 Idem.

Second, Lyman says the following about the Committee on Transportation:

> "The Transportation Committee's particular function was to arrange for the rapid, unimpeded transportation of troops when summoned in case of riot or other emergency; to protect critical points throughout the State, such as power houses, sources of power, bridges, munitions, water-supply plants, conduits, etc.; or to meet any danger threatening the public safety and demanding the presence of armed forces.
>
> "A card index list was made by the Committee and submitted to the chairman of the Committee on State Protection, together with the best information obtainable as to the particular street railway officials to be notified in case of a given emergency."[1]

A map was also drawn up showing power lines, steam railroads and street car tracks. It was also suggested that working hours be staggered so that transportation facilities would not be overtaxed.[2] The committee arranged for free transportation for the 2nd, 6th and 9th Regiment who were going on guard duty.[3]

Third, the Committee on Horses made a survey of all horses for military use and gave actual assistance to the 9th Regiment in April, 1917.[4]

From the above brief description of a few of the committees, it can be seen to what extent they undertook their various tasks, all of which came under the general pattern of the Massachusetts Committee on Public Safety.

****

1 Lyman pp. 19 & 20
2 Ibid p. 20
3 Ibid p. 21
4 Ibid p. 25

That all of these things could be undertaken under existing laws was doubted.[1] On April 24, 1917, the Governor sent a message to the general court asking for emergency war powers. The message read as follows:

> "A committee connected with the Committee on Public Safety has prepared a bill in part following precedents established during the Civil War that seems to cover the present situation. They have conferred with the Attorney-General and I understand it meets with his sanction. The bill seems to me to give powers which may be needed in this emergency, and I recommend its passage, or with such modifications as may seem wise to the Legislature."[2]

The enacted statute was known as "The Commonwealth Defense Act", and it had no precedent in the history of the State. It was the first of its kind adopted in the United States.[3]

On the scope of this measure Lyman says the following:

> "But by far the most important State law enacted, as affecting the interests of the Committee on Public Safety, was the Commonwealth Defence Act. The birth of the Massachusetts Committee on Public Safety was the result of a universal feeling among our citizens that the times demanded an entirely new order of defense, and the growth of the Committee's work was supported by patriotic enthusiasm. At the beginning, however, its scope was strictly limited to such action as our anti-war laws permitted. It therefore became at once of the utmost importance to procure legislation as free as possible from red tape, and broader in conception than the laws under which we had been living through a long era of peace; otherwise the results the Committee afterwards obtained, and for which it was created, could never have been gained in strict accordance with either our statute or common law. To meet this necessity which the war had brought about, and to strengthen the hands of the Committee, the Commonwealth Defence Act was passed on May 26, 1917.[4]

****

1 Lyman p. 22 Ref. IX
2 Long p. 191 Ref. VIII
3 Lyman p. 23 - Hart p. 602 Ref. IX
4 Ibid. p.22

John H. Sherburne says:[1]

"This act placed almost supreme military powers, for the duration of the war, in the hands of the governor. It gave him the right of seizure of property and broad powers over the production use and distribution of food. It authorized courts to refuse bail in cases menacing the public safety, authorized the suspension of certain laws relating to labor and to the appointment of civil officers and in other respects greatly extended the power of the executive civil officers. Drastic as it was and contrary to the precedents of State constitutional legislation, the law was accepted by all sane and patriotic people as a necessary war emergency measure.

"The Federal legal authorities endorsed it, form and substance, and recommended it to other States as an excellent example of legislation, a recommendation that was widely followed. As soon as it went into effect, the governor delegated much of his authority to the Committee on Public Safety."

The contents of the bill were many. On this point, Lyman says:[2]

"Among the principal subjects treated were the registration of aliens over eighteen years of age and the imposition of additional restrictions upon this class of citizens, with a punitive clause added for any violation of the provisions of the act. The governor was empowered to take property, real and personal, and to give compensation for the same; to appoint special officers, and to cooperate with the Council of National Defense. In addition, he was authorized to delegate to others some of the powers given to him by the bill, the later exercise of which right proved the base and bulwark of a greater part of the activities of the Committee on Public Safety. It contained provisions, also, for the transfer of real estate located within the Commonwealth to persons outside the state, and to a certain degree relaxed the rigor of the law in cases of absentee defendants who were in the military or naval service. It established the rights of courts to refuse bail to defen-

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1 Hart (Sherbourne) p. 606, vol. V Ref. VI
2 Lyman pp. 23 & 24 Ref. IX

"dants when their liberty involved a menace to the public safety. The construction of explosives, bomb or shell, was made subject to fine and imprisonment. The act also gave the governor the right to survey the amount of food in the Commonweal th, as well as land and labor available for its production; to collect all such other data as would help strengthen the food situation, with forcible attendance of witnesses and co-operation of State departments in gathering such information; and the power to regulate the use of fireworks and firecrackers. It provided further, for the appointment of a committee for regulating and licensing the hours of labor during the period of the war."

It was under this statute that the Committee on Public Safety acted.

Some of the other activities undertaken by the committee were publicity, coordination of the aid societies to prevent overlapping of effort, farm labor, intelligence, registration, establishment of schools for the armed forces, gathering of military equipment, and outfitting the State Guard. Other committees were established made up of interested citizens and professional men. Some of these were the Volunteer Dental Committee, the Chiropodist Preparedness Committee, the Peter Bent Brigham Hospital Unit, and the Speakers Bureau. A radio school was conducted to train operators. Great assistance was rendered to the City of Halifax when that city was confronted with a terrible catastrophe. The committee helped in the settlement of labor disputes. A saw-mill unit was sent to England, and boys were trained for farm work. Americanization, Landlord and Tenant War Profiteering and Non-war Construction Committees were also set up.

CHAPTER IV

THE PRESENT CRISIS AND EXTRAORDINARY POWER (1941-1943)

It was on August 5, 1940, that the first official signs of a state mobilization to meet a world crisis were noticed.

Governor Saltonstall released preliminary plans for the formation of a Massachusetts Committee on Public Safety. It was to proceed along the same lines of its late predecessor (1917-1918) under Governor McCall.

> "It will provide an active central organization to coordinate the many defense activities now under way in this state and to deal with the varied problems affecting the welfare of the citizens likely to arise in connection with national defense."[1]

On the functions of this committee, the Governor said the following:[2]

> "Massachusetts has unsurpassed natural and human resources; and a body of citizens eager to use these resources to the fullest extent for our common well-being. I am reliably informed that no other state in the Union is doing more than - if as much as - Massachusetts in contributing to the national defense or in building up its own strength to meet any possible contingency. What we need most now is a directing agency to unify our efforts so that they will produce maximum effectiveness.
>
> "I want to make it clear that I am not creating this committee on the basis of any opinion that war is imminent. I have no official information not completely known to the general public through the newspapers and radio.
>
> "But I think every citizen will agree that the situation demands the utmost preparedness.
>
> "The time to prepare for every contingency is now; and not when a crisis is too close upon us for effective action. Hence my decision at this time to form this committee of able patriotic citizens. I feel that the part which they can play is most important."

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1 Release from the Governor's office Monday, August 5, 1940.
2 Idem.

Continuing, the Governor said:[3]

"The usefulness of such a committee was amply demonstrated by the brilliant record of Governor McCall's committee under the chairmanship of the late James J. Storrow, with Henry B. Endicott as its executive manager. So far as we can see now, the committee about to be set up will function along similar lines.

"Its scope will be primarily non-military, although it will assist the military authorities in such ways as they may require civilian co-operation.

"It will work closely with the federal government. In fact, one of its principal functions will be co-ordination of local, state, federal and private activities.

"It will be the directing and advising organization for the defense committees which we have already established in every city and town.

"It will make plans and preparations for handling all sorts of problems likely to arise when a nation overnight vastly increases its industrial and military establishments. Such problems may include possible fuel shortages, aid in recruiting, public information, food and agricultural resources, transportation, housing, and many other fields, including emergencies impossible to foresee.

"I am confident that we are going to assemble a representative group of the best-fitted men and women in our state who will be ready and willing to give their best efforts to this task. And I am equally sure that they will have the 100 percent co-operation of all the citizens of the Commonwealth."

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[3] Idem.

The governor organized this committee under his executive power as chief-executive-magistrate of the state. What power has the governor to create such a body? The governor's constitutional power in time of emergency has been restricted by the amendment of the article under which his predecessors acted.[4]

The article under which he now acts was amended to the constitution in 1918, and it states:

> "The general court shall provide by law for the recruitment, equipment, organization, training and discipline of the military and naval forces. The governor shall be the commander-in-chief thereof, and shall have power to assemble the whole or any part of therein for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws. He may, as authorized by the general court, prescribe from time to time the organization of the military and naval forces and make regulations for their government."[5]

It is not as broad and sweeping in the power it gives to the governor as that of the original article, so consequently the addition of supplementary statutory power was necessary.

Total war means a total defense, and with this purpose in mind the general court of Massachusetts girded itself for this totality of conflict by enacting into law statutes that are of such a magnitude that they cover adequately the demands for an all-out-defense.

One of the features of the system of government of the enemy is the centralization of authority and power in the hands

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4 Constitution of Massachusetts, Section I, Chapter II, Art. VII.
5 Ibid, Art. LIV.

of a single individual who either exercises it himself or delegates it to trust-worthies.

It would seem that the legislature of the old Bay-State took one from the axis foe when it passed the two statutes under which so much has been done in the way of emergency action by the chief-executive power of the state and his subordinates. The first was entitled AN ACT TO PROVIDE FOR THE SAFETY OF THE COMMONWEALTH IN TIME OF MILITARY EMERGENCY[6] and was passed in October of the 1941 session of the general court.

It is divided into two parts, the first of which is both organizational and commissary in nature and the second of which is a commission of powers.

The first calls for the creation of a Massachusetts Emergency Commission by the governor. This commission is to have the authority to conduct practice air raids and blackouts, lay down regulations for the same and prescribe insignia for its members. Cities and towns are allowed to do the same with the approval of the commission. Cities and towns may also add auxiliary members to their respective police and fire departments. At the governor's request, they are to send their police and fire personnel with equipment to any part of the state that he may designate. They may render aid to other cities and towns when asked for by said cities and towns.

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6 Title, Chapter 719 Acts of 1941.

It is only after the President of the United States has informed the governor of an emergency or after the declaration of war that the governor, with advice and consent of council, may issue a proclamation setting forth a state of emergency. After the promulgation of such a proclamation and with the consent of the council, the governor may take possession when he deems it necessary:[7]

> "(1) of any land or buildings, machinery or equipment
> (2) of any horses, vehicles, motor vehicles, aeroplanes, ships, boats or any other means of conveyance, rolling stock of steam or electric railroads or of street railways
> (3) of any cattle, poultry and any provisions for man or beast, and any fuel, gasoline or other means of propulsion which may be necessary or convenient for the use of the military or naval forces of the commonwealth or of the United States, or for the better or welfare of the commonwealth or its inhabitants."

The governor is also given power to cooperate with federal authorities, civilian and military, and authorities of other states in order to better the national defense. He may make orders and regulations for blackouts and air raids as well as for the preservation of life and property. These regulations and orders are to supercede any existing law, ordinance, rule, etc. for the duration of the state of emergency. Violation of the same carries a penalty. Although this act was to expire on the first day of February, 1941, it has since been amended and

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7 Exact quotes, Part II, Section 6, Par.(c), Clauses (1), (2), and (3) of Chapter 719 Acts of 1941.

now is in effect for the duration of the emergency.[8] It was legislation passed during a period of peace which was soon followed by one of war.

On December 8, 1941, the governor acting under the authority of Chapter 719 which called for the creation of a Massachusetts Emergency Commission appointed as chairman J. Wells Farley who was also the executive director of the Committee on Public Safety. As members, he appointed the following department heads: the Adjutant General, the Public Works Commissioner, the Commissioner of Public Safety, the Metropolitan District Commissioner, the Public Health Commissioner and the Public Utilities Commissioner. At the same time he made it clear that he was not invoking the broad powers conferred upon him by the act.[9]

This action now gave Massachusetts two bodies that were to act in case of a war emergency; one created by and receiving its power from the executive, the other receiving its power and being established by the legislative branch. The governor seems to have thought of some way in which to fuse the two by appointing as chairman of the Commission the director of the Committee on Public Safety. How this was going to work out was never quite seen because an act[10] was approved on the thirty-first day of January, 1942, which abolished the Massachusetts Emergency Commission and gave its power to the governor's Committee on

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8 Chapter III Acts of 1943
9 Release from Governor's Office dated December 8, 1941
10 Chapter VI Acts of 1942

Public Safety. This same act also stated that the Committee was to appoint an executive committee to exercise these functions. The executive committee's membership was to be restricted to citizens of the United States and allied nations. All this would seem to give a definite approval by the legislature of the action of the governor in creating his Committee on Public Safety. There also were other legislative enactments which might be considered as constituting an approval of the Committee.[11]

That greater statutory power for the governor to act was quite evident. The Attorney-General says the following on such legislation:[12]

> "Prior to the convening of the special session of the General Court on January 26, 1942, this Department had engaged in a survey of the legal machinery of the Commonwealth with reference to its adaptability to meeting a sudden emergency which might confront it in the event of total war. Heads of various departments, divisions, boards and commissions of the Commonwealth were consulted with reference to their particular problems and many proposals for legislation were received and considered."

Continuing, the report says:

> "Among measures enacted at the special session was chapter 13 of the Acts of 1942, entitled "An Act to provide for the safety of the Commonwealth during the existing state of war." This important enactment, together with chapter 719 of the Acts of 1941, expressly confers upon the Chief Executive vast powers over persons and property within the Commonwealth. In effect, these are powers conferred upon the Chief Executive to govern by order or decree, subject to the limitations imposed by the General Court."

This additional statute approved the governor's State of

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11 Chapter III Resolves 1941, Chapters 33,210 and 419 Acts,1941

12 Attorney General's Report pp.9-10, Ref. II

Emergency proclamation issued under the former act. In order to meet this emergency it stated that the governor, in addition to the power which he already has, shall have all the power necessary over persons and property which is within the bounds of the legislature to grant to him as the supreme executive magistrate of the state and commander-in-chief of its military forces.

Then, without limiting this grant of power, the act specifically enumerates that upon which he may exercise this authority.

It allows him to issue orders and regulations which if violated carry punishment and like the preceding act it states that such orders and regulations were to set aside any law, ordinance, rule, etc. which are inconsistent with them. It also allows the Civil Service Director with a majority of the Civil Service Commission to set aside the legal provisions that apply to the employment of persons.

The constituted authorities may enter upon private property for the purpose of enforcing air raid and blackout regulations.

Full police powers are given to the auxiliary police members of cities and towns when they are on active duty wearing the proper insignia. Active duty is that which is set forth by the proper authorities in each jurisdiction when they state that a situation exists which cannot be properly handled by the regular and reserve police forces. Towns may allow the auxiliary police

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to enforce blackout and air raid regulations as stated above.

Recovery of damages for property taken under this act is permitted, and the method to claim these damages is stated. The act is to remain in force for the duration of the emergency.

The following are the acts in full with the amending acts as passed by the legislature. (See appendices.)

Evidence presents itself that the 1917 statute was consulted by the General Court when they drew up chapter 719.[13] There are whole sections taken verbatim from the former. Paragraphs (c), (d) and part of (e) of section 6 of 719 are exactly the same as sections 6, 7 and part of 8 of chapter 342 of 1917. Paragraph (f) of the same section 719 does not deviate from section 9 of 342. Both chapter 719 and 13 give more power to the governor than that given to the governor in 1917 by 342.

The council of state governments has drawn up a model defense act for the states to adopt. It is of interest to compare this model act with these two emergency laws. It is called "An Act Relating to National and State Defense, Providing for the Establishment of a State Council of Defense and Local and District Councils of Defense, and Prescribing the Powers and Duties Thereof."[14] The first sections call for the executive establishment of a state council of defense. Chapter 719 covers this section adequately. The powers given in the model act to the governor are not as great as the powers conferred upon the Massachusetts governor by chapter 719 and 13. The war council of this act is to be an advisory body rather than an administrative body. It makes suggestions and investigates and then advises the governor to take certain actions within the limits of the act.

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13 Chapter 342 Acts ,1917
14 Title--Book of States pp.41 & 42, Ref. III

Unlike his predecessor of 1917, the present governor did not delegate the authority conferred upon him by the emergency laws enmasse to his Committee on Public Safety. He has used this power through the promulgation of "Executive-Orders" which are something new in the history of the state. No governor in the past has executed the provisions of an act by an executive order. Proclamations have been used by most of the governors, some of them carrying out laws and others just stating facts.[15][16]

Why then does he use an executive order? From the Cyclopedia of American Government:[17]

> "The Ordinance Power - an important domain of executive power is that of issuing ordinances, regulations, or decree laying down rules for the guidance of administrative officials, interpreting the meaning of statutes, or of supplementing the laws in respect to many matters which have been left to the direction of the executive."

Then from the laws themselves, the following is quoted, and according to said chapter 719 the governor, after issuing this proclamation setting forth a state of emergency,[18]

> "may whenever he considers that the public safety so requires make such orders or regulations for air raid precautions and for the preservation of life and property as he may determine to be advisable, and may appoint such persons as he deems necessary to carry out said orders and regulations."

Going on the act says:

> "So far as necessary to insure that blackouts or other civilian defense measures established by the governor under any regulations provided by him shall be effective

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15 Long, Proclamations pp.216,252, & 399, Ref.VIII
16 Ibid p. 164
17 Cyclopedia, Volume I p. 688 Ref. V
18 Section 8, Par. (a), Chapter 719 Acts 1942

"and complete, the provisions of orders made under this section during the period for which they are in force sahll supersede any laws, rules, regulations, ordinances or by-laws to the extent that they are inconsistent therewith."[19]

From chapter 13,

"The governor may exercise any power, authority, or discretion conferred upon him by any provision of this act or of said chapter seven hundred and nineteen by the issuance or promulgation of executive orders or general regulations, or through such department or agency of the commonwealth or of any political subdivision thereof, or such persons as he may direct by a writing signed by him and filed in the office of the State Secretary."[20]

And continuing, it states that,

"Any provision of any general or special law, or of any rule, regulation, ordinance or by-law, to the extent that such provision is inconsistent with any order or regulation issued or promulgated under this act, shall be inoperative while such order or such regulation is in effect; provided, that nothing in this section shall be deemed to affect or prohibit any prosecution for a violation of any such provision before it became inoperative."[21]

As the Attorney-General says in his report,[22]

"In effect, these are powers conferred upon the Chief Executive to govern by order or decree, subject to the limitations imposed by the General-Court. In normal times such powers would be utterly inconsistent with a democratic form of government."

The report claims the right of such power for the governor when it says that,[23]

"In the light of experiences of other countries during the present war (however) it was believed that such powers would enable the State govern-

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19 Ibid par. (b)
20 Chapter 13, Section 3, Acts, 1942
21 Ibid, Section 4
22 Report Attorney General p. 10 Ref. II
23 Ibid

"ment to meet promptly and effectively at least some of the forseeable emergencies of total war."

Realizing the potential power of these orders, the Attorney-General's office formulated,[24]

"certain rules of procedure with reference to consideration of requests for the exercise of these extraordinary powers. This procedure, designed to facilitate the promulgation of Executive Orders when needed and at the same time to submit all requests to the most thorough and searching legal scrutiny that circumstances would permit, has been generally followed. Requests for Executive Orders initiated by governmental departments are transmitted to the Office of the Governor in duplicate, thus permitting the Chief Executive to forward one copy immediately to the Attorney General for his advice and opinion. Department heads have been instructed to include in such requests (a) a statement of the results sought to be achieved by the Order; (b) a full statement of the facts which brought about the request for the Order; (c) as complete references as possible to existing laws, rules and regulations pertinent to the subject matter of the request; (d) a statement of reasons why existing machinery is inadequate to effect the result sought by the Order; and (e) suggestions by the Department head for specific limitations to prevent promulgation of Executive Orders in forms so broad that they might affect situations not intended to be covered."

"Upon receipt of a copy of the request this Department immediately begins a study of the factual situation and the law. The Department endeavors to investigate facts on which requests for each Executive Order are predicated and carefully to study the relation of the proposed Executive Order to provisions of existing law. In each case effort is made to keep the disruption of the normal legal machinery of the Commonwealth down to a minimum, to provide safeguards against arbitrary or capricious action when authority is delegated, and to confine the provisions of the Order to the matters intended to be dealt with."

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24 Ibid pp 10-12

> "Before an Order reaches the stage of final draft, it is particularly subjected in this Department to the test of whether it will (a) expedite the war effort by providing for positive action; (b) expedite the war effort by removing legal impediments to action necessary to the war effort; (c) expedite the war effort by co-operation with the Federal government or the government of another state in a manner not provided for by existing law; and (d) preserve the principles of local authority, home rule and state sovereignty in so far as it is possible so to do consistently with the object believed to be necessary to the legality of a proposed Order found necessary to the war effort or any part thereof, such doubts are resolved in favor of taking affirmative action necessary or expedient totthe prosecution of the war. Technical legal consideration are not permitted to outweigh the paramount object of a successful war effort."

Under the procedure just described the governor has promulgated fifty-three executive orders from the thirty-first day of January, 1941, to the eighth day of March, 1943. Three[25] of them have been issued solely on the authority of chapter 719 and seven[26] under that of chapter 13. The remaining forty-three have been issued under the provisions of both chapters. Twenty[27] of these orders set aside either the whole or part of existing statutory law. One[28] amends a statute and four[29] make additions to a statute. One order amends another and two[30] repeal three others.[31]

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25 Executive Orders 1,2,3
26 Ibid 4,5,6,7,9,11 & 23
27 Ibid 5,9,18,20,21,23,25,26,27,28,29,31,33,36,37,41,42,43,49,51
28 Ibid 4
29 Ibid 12,16,19,34
30 Ibid 8
31 Executive Order 40 repeals 31 & 52 repeals 3 and 10

Under these executive orders, power has been granted to the Massachusetts Committee on Public Safety, Departments of the State Government, Cities and Towns, people, and other units of the government.

In the first group following is a brief description of the content of each order that grants power specifically to the Massachusetts Committee on Public Safety alone and to it in conjunction with other departments of the state government. It should be noticed that most of the power revolves about the protection of people and property with rules and regulations during times of air-raids and blackouts and other emergencies of like nature.

On the thirty-first day of December, 1941, the governor issued Executive Order No. I. By this order he confirmed his creation of the Massachusetts Committee on Public Safety and the appointment of its members. He gives it the power to organize, supervise, direct and coordinate local committees in the cities and towns. The Committee with all the other duly constituted officers of the State are directed to carry out all the orders issued or to be issued by the governor for air raid precautions or the preservation of life and property. The Committee is also, subject to the governor's direction, authority to take all further action for the same. This order gave to the Massachusetts Committee on Public Safety power that was to be exercised by the Massachusetts Emergency Commission which had not as yet been abolished. Executive Order No. 3 did the same thing. It prescribed rules and regulations as to lighting, movement of persons and vehicles, signals and the like during the period of a blackout. The Massachusetts Committee on Public Safety was given supervisory power over blackouts and the conduct of them. This order was promulgated January 8, 1942. Before any more executive orders pertaining to the Massachusetts Committee on Public Safety were issued, an act, as stated before was approved on the thirty-first of January abolishing the Massachusetts Emergency Commission and giving its power to the

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Safety Committee. This action by the General Court would constitute an approval of Executive Orders 1 and 3. On this same day chapter 13 was approved. Both of the above orders were issued under the authority of chapter 719 alone.

Executive Order No. 10 came out on the thirty-first of March and it gave to the Massachusetts Committee on Public Safety power to hold practice blackouts at its discretion. The rules set forth in Order 3 were to take effect when this order is enforced.

Executive Order No. 30 gives power to both the Massachusetts Committee on Public Safety and the Commissioner of Public Welfare to take action in the event the U.S. Government orders evacuation of specified areas within the State. This action pertains to the care of the homeless and injured.

Executive Order No. 40 was issued at the request of the Federal Government. It established dimout areas and regulations for such. The Committee is allowed to change any part of this order except sections 14, 15 and 16 which deal with automobiles and their lighting. This Order also voids Order No. 31 which deals with the same thing in a more limited manner.

Executive Order No. 45 was issued to meet the oil shortage. It gave power to both the Committee and the Commissioner of Public Welfare to provide and care for people who are forced out of their homes for the lack of fuel.

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Executive Order No. 47 gave authority to the Committee and the Commissioners of Public Welfare, Public Health, Education, and Labor and Industries to cooperate with the Federal Government and with each other and with other agencies in order to provide day care for children of women who are working in national defense and the like.

Executive Order No. 50 called for the organization of the hospitals of the State to meet any emergency. The organization is set up and described as to its functions. The director of the medical division of Public Safety Committee was given certain control over the emergency hospitals as set up under this order.

The last Order that relates to the Committee was Executive Order No. 53, issued February 12, 1943. It defined civilian defense terms and restated the regulations pertaining to lights, movements of persons and vehicles, practice blackouts and air raids, signals, and the enforcement of such with its penalities for violation. It also voids and sets aside executive orders 3 and 10, as of February 17, 1943.

The preceding orders with the provisions of the emergency statutes are the legal basis upon which the Committee on Public Safety has acted. This, of course, in addition to the powers, the governor had the right to give it as chief executive magistrate of the state.

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The Council of State Government in its memorandum of August 2, 1940,[32] believes that the preservation of institutions and agencies, and the maintenance of health and morals to be the duty of the state and local governments. Defense against external agression is the job of the Federal government. It suggests that Defense Councils in the states be divided into the following specific fields:

1. Agricultural Resources and Production
2. Civil Protection
3. Health, Welfare, and Consumer Interest
4. Housing, Works, and Facilities
5. Human Resources and Skills
6. Industrial Resources and Production

What about the Massachusetts Committee on Public Safety? In his release on the establishment of this Committee, the governor stated its purpose and function. In a letter to the executive director, the governor said,[33]

> "Your duties lie in arousing the civilian population to the responsibility of protecting themselves in moments of emergency, and in assisting them and advising them along the best and most practical lines to accomplish this protection."

The Committee has been set up along functional lines as shown in the accompanying chart. The Committee on Public Safety receives suggestions and the like from the Federal Office of Civilian Defense. In an interview[34] with a member of the Committee's legal staff, I was informed that it ignored the Federal office. The reason offered was that Massachusetts was away

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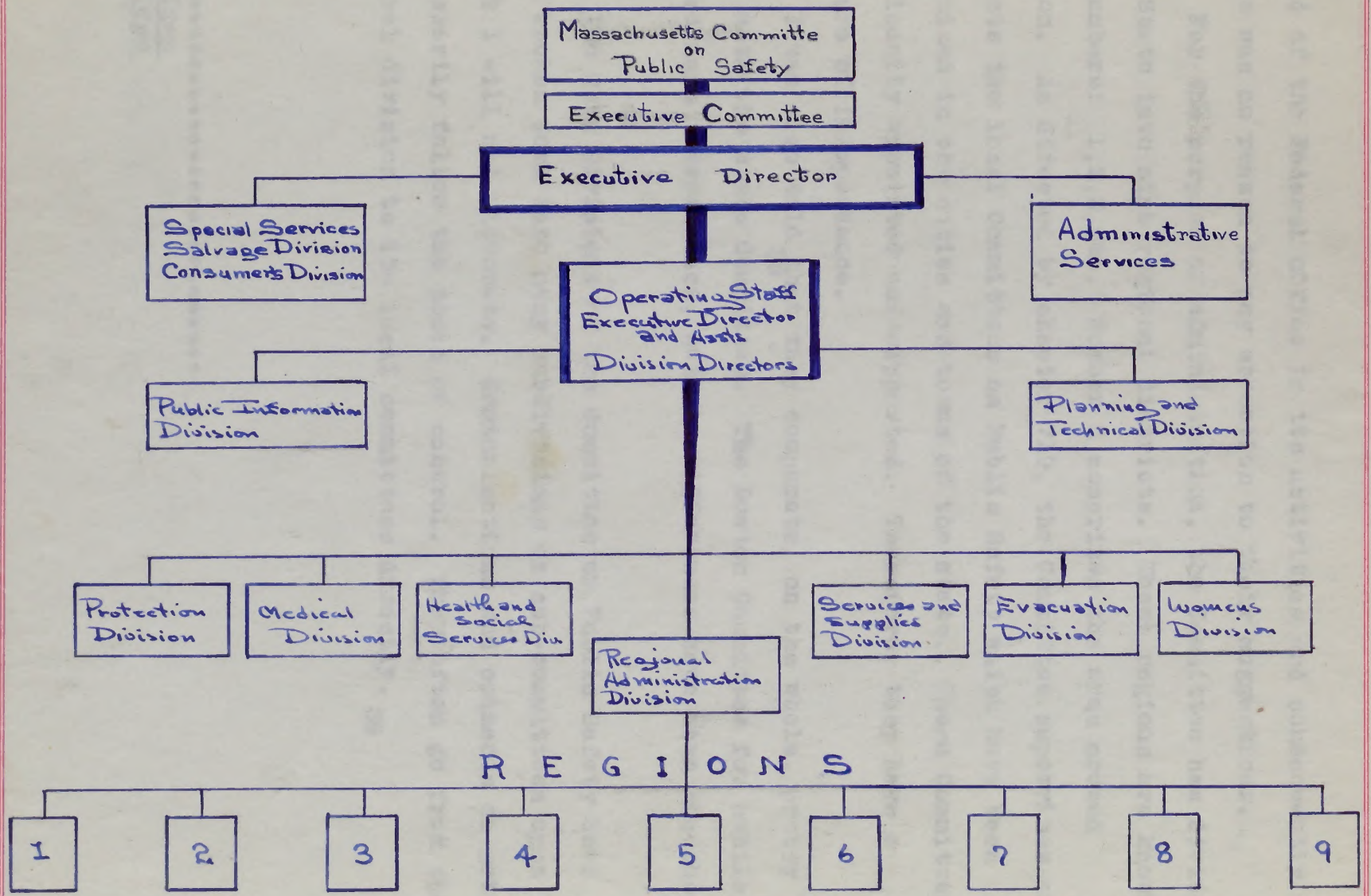
32 Book of the States pp.35,38,39,40 & 41, Ref. III
33 Report of M.C. on P.S. p.17, Ref. XI
34 Mr. King, March 26, 1943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Executive Committee
Executive Director
Special Services
Salvage Division
Consumers Division
Administrative Services
Operating Staff
Executive Director and Asstis
Division Directors
Public Information Division
Planning and Technical Division
Protection Division
Medical Division
Health and Social Services Div
Regional Administration Division
Services and Supplies Division
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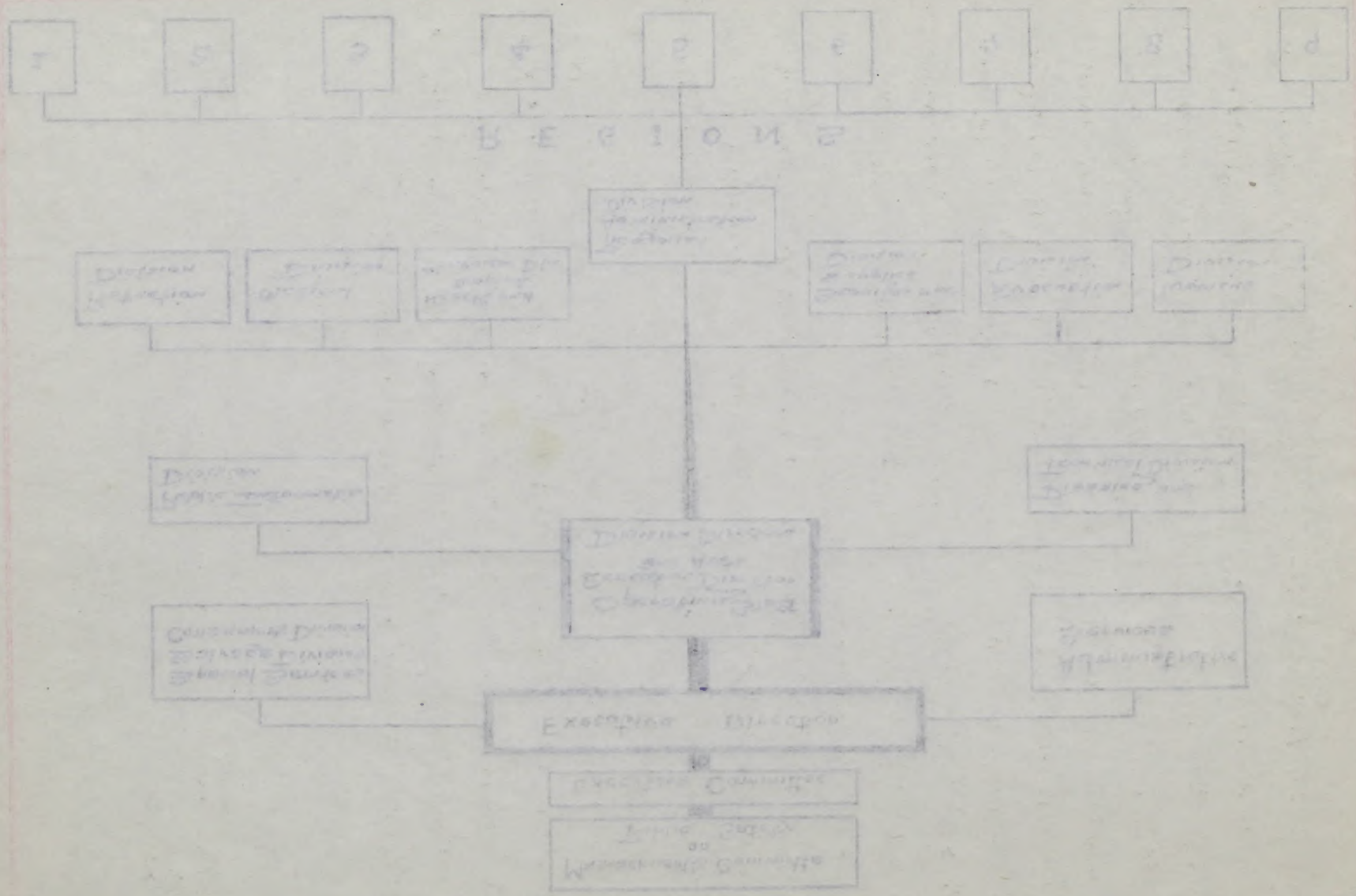

ahead of the Federal office in its activities and consequently there was no reason to pay attention to their suggestions.

For the purpose of administration, the Committee has divided the State into nine regional districts. These regions are known by numbers: 1,2,3,etc. Number 5 comprises the area around Boston. As directed by chapter 719, the Committee supervises and directs the local Committees on Public Safety which have been organized in the cities and towns of the state. These Committees are locally appointed and supported. Therefore, they have a measure of independence.

I was also told[35] that they cooperate, on the whole, pretty well with the State Committee. The Boston Committee for awhile showed much independence, but the differences have been smoothed out.

The Main Divisions of the Committee on Public Safety have been broken down into many subdivisions or sub-committees upon which I will not elaborate. Communications and commands do not necessarily follow the chain of control. They often go from the central division to the local committees directly.[36]

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35 Idem
36 Idem

In order to understand the scope of the Committee, I present the following figures as to the size of its personnel:[37]

As of June 30, 1942

Local Community Personnel	Total Personnel
Administrative Staffs	3,918
Report Center Staffs	14,468
Protection Division	227,574
Medical Division	87,427
Services and Supplies Division	7,884
Planning and Technical Division	2,740
Health and Social Services Division	15,604
Evacuation Division	3,397
Public Information Division	717
Womens Division	20,703
Consumers Division	278
Salvage Division	859
Total	385,569
State Headquarters and Regional Staffs	1,442
Total Civilian Personnel	387,011

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37 Committee's Report No. 4 p. 2 Ref. 11

A detailed report on all the activities of the Committee are out of the bounds of this paper. In order to show the depth that it has carried out its functions it might be well to examine one or two.

The Committee on Industry is a subdivision of the Protection Division. In the Massachusetts Committee on Public Safety report, it is stated that this sub-committee,[38]

> "has been endeavoring to set up A.R.P. systems in all plants of 300 or more employees in the Commonwealth. A survey blank was prepared and sent out to over 700 large industrial plants. To-date, 496 plants, or 64.4% have replied, giving full information asto the manner in which they are protecting their business against against saboteurs, enemy agents and possible air raids."

The Committee on Industrial Health, a sub-committee of the Health and Social Services Division, is described in the report in the following manner,[39]

> "It has been appointed to formulate a program and to stimulate the development in industry of such procedures and cautions as are believed will contribute to that purpose by representatives of government, medicine, nursing, labor, industry and public health."
>
> "The specific objectives of State and local Committees on Industrial Health are:
>
> 1. To gather and correlate medical, nursing, nutritional, chemical, engineering, and other scientific and practically developed information which will be helpful in maintaining the health of workers in industry and business.
>
> 2. To make such information available to employers and employees alike and therefore assist in the

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38 Ibid p.6
39 Ibid p.6 & 7

"minimizing of occupational diseases.

3. The reduction of harmful physical and mental fatigue.

4. The lessening of industrial accidents and the general promotion of health for industrial workers."

The Amusement Industry Committee of the Protection Division has developed an emergency program for the theaters of the state. A "Manual for Theaters" has been prepared which relates to all phases of theatre protection. Trailers on what civilians should do during an air raid have been prepared.[40]

The Division of Health and Social Services. Its duties are to unite the existing social service establishments and health agencies. This work is to be a supplement to that of the Protection, Medical, and Evacuation Divisions. The report states there are,[41]

> "fully organized and functioning, a total of 325 Health and Social Service Committees throughout the State. The remaining 26 communities, which are as yet unorganized, possess a comparatively small need for this type of work and we therefore feel that our present organization is complete. 91% of the organized cities and towns have sub-committees on Health, which include representatives from the local Health Department, local Nurses Associations, Red Cross, Water and Sewerage Department, and other related Social Service organizations."

It has enlisted 25,000 professional social workers in the State for volunteer duty and is also developing plans to appoint agents

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40 Ibid p.7
41 Ibid p.8

to rehabilitate men that have been rejected by the civil service and induction centers.

Through the Drafting Department of the Planning and Technical Division many maps have been gathered and drawn for the use of other divisions. Some of them are:[42]

(a) Population Distribution, shown by classified areas.
(b) Railroad Systems.
(c) Priority Routes, Military and Civilian.
(d) Medical Supplies Priority Map.
(e) Fire Equipment Distribution.
(f) Medical Division Map showing Base Hospitals, etc.
(g) Map showing Water Supply types and Sewerage Plants.
(h) Operations Maps showing Control Area Districts.
(i) Staff Operations Maps for all divisional operations.
(j) Work on 14 maps for Fire Coordinator.
(k) Map of Topography and Natural Drainage Systems.
(l) Smoke Screen Map for Camouflage of Quincy Area.
(m) Map of Strategic Routes and Railroads.

On the Evacuation Division, the report states the following:[43]

"Surveys of Temporary Shelters for care of refugees after disaster have been made in cooperation with the Red Cross, and with a few localities still missing, show a capacity of 300,000."

"Surveys of Rehousing facilities are in process, and on the basis of the average ratio between capacity and population of localities in which the survey has been completed the rehousing capability of the Commonwealth will be about 860,000 persons. In addition, arrangements have been made with New Hampshire and Vermont to use their facilities, if not needed for their own residents, with the result that about 150,000 people can be resettled in New Hampshire and about 100,000 in Vermont."

"Through the Services and Supplies Division, arrangements have been made to use railroad trains, and about 1,100 passenger cars will be available immediately if the need arises. In cooperation with

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42 Ibid p.8
43 Ibid p.8

> "the United States Coast Guard more than 1,000 boats--from Nantasket steamers to private motor-launches--may be used to evacuate refugees by water. About 3,000 busses and 2,500 taxicabs will be ready for evacuation use, and this Division is now organizing Evacuation Convoys of private cars, which, if gasoline and tires hold out, should number more than 30,000 cars. It is planned to train and instruct the drivers of these cars so that they will be able to lead and control civilian convoys of evacuees.

Summarizing, it can be said that the Massachusetts Committee on Public Safety has undertaken tasks which closely resemble its 1917 parent. Of course, there are things that the present body has undertaken which its parent did not; for example air raid and blackout practices.

The following two Executive Orders might be classified with those delegating power to the Committee on Public Safety. However, I consider them outside the scope of the Massachusetts Committee on Public Safety but closely related to it.

Executive Order No. 15 promulgated on the fifteenth of May, 1942, was issued for the purpose of coordinating, mobilizing, and utilizing the police forces of the Commonwealth. The State is divided into nine districts which are the same as the administrative regional areas of the Committee on Public Safety. In each of these districts there is to be a Board of Police Mobilization Co-ordinators to be made up of a limited number of the ranking police officers in each district as selected by the

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governor. Section 5 of the order says,

> "It shall be the duty of the police mobilization co-ordinators, of the directing heads of police forces and departments and of the sheriffs, within each region, to prepare a complete and detailed survey and tabulation of the extent and availability of personnel, equipment and facilities for transportation and communication within each community and each region."

The manner in which a town or city gets police help is stated in Section 6 as follows:

> "The directing head of any police department of force may, when he deems the available police facilities of his community to be inadequate to cope with a particular situation, request that the Board mobilize and assign to duty in such community additional police assistance. Upon receipt of such a request, the Board for the region in which such community is located may, with the approval of the Governor, mobilize and dispatch to said city or town such assistance, the Board shall determine the number of men and the nature of the equipment to be furnished by any or all of the police forces or sheriffs in the region, and shall order the heads of the respective police forces and the respective sheriffs immediately to send the indicated personnel and equipment to the community requesting the same. It shall be the duty of the directing head of each police department or force and of each sheriff to comply with such orders from the Board."

This order also provides for an Advisory Board, appointed by the Governor, to consist of not more than seven members. Its duty is to be that of assisting and advising the other Boards.

Executive Order No. 22 of June 19, 1942, calls for the same type of organizational set up as described above in Order 15, only the object is that of fire-fighting equipment and personnel

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mobilization. It called for the same type of regional boards and manner of requesting help. This order had an extra feature in the establishment of a regional fire dispatch center for the reception and correlation of information and the like. All requests for help were to be routed by the boards through their respective centers which are to operate on a twenty-four hour schedule. It also calls for an Advisory Board as in the former order. To give help from one region to another, the governor's approval must be given. In its report the Massachusetts Committee on Public Safety states that the following action has been taken under this order.[44]

> "The Fire Coordinator of the Massachusetts Committee on Public Safety has been made Chairman of the Governor's Advisory Fire Mobilization Board. This Board, through its Chairman, is now supervising the collection of a new inventory of fire apparatus and equipment, and is engaged in further developing the program of mutual aid between municipalities."
>
> "The Fire Coordinator of the Protection Division has made a comprehensive inventory of all fire apparatus and equipment in the Commonwealth and charted it in such a way that any particular device can be drawn for use in sections of the State where such emergency might arise. In addition, the Fire Coordinator has made a compilation of the types of fire apparatus, together with its age for the Office of Civilian Defense. In this connection it is interesting to note that over 40% of the pumping engines in the Commonwealth were found to be "obsolete" or over 15 years old."
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> "In cooperation with the Fire Chiefs, a plan of coordination has been worked out of the movement of

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44 Ibid p.6

"fire apparatus during an emergency, involving an arrangement for mutual aid response within various territories."

Pursuant to the provisions of paragraph 3 of Executive Order No. 22, the following men have been appointed members of the Board of Fire Mobilization Co-ordinators:

REGION I.	T.F. Burke	Chief, Dept.	Pittsfield
	J.E. Saulnier	Chief, Dept.	North Adams
	O.R. Hutchinson	Chief, Dept.	Lenox
REGION II.	H.C. Root	Chief, Dept.	Springfield
	T.W. Hurley	Chief, Dept.	Northampton
	H.R. Ferris	Chief, Dept.	Greenfield
REGION III.	C.J. Kiessling	Chief, Dept.	Worcester
	O.C. Meunier	Chief, Dept.	Southbridge
	L.R. Trevett	Chief, Dept.	Framingham
REGION IV.	C.F.Stackpole	Chief, Dept.	Lowell
	J.E. Scanlon	Chief, Dept.	Lynn
	B.L. Chase	Chief, Dept.	Haverhill
	W.C. Mahoney	Chief, Dept.	Peabody
REGION V.	S.J. Pope	Chief, Dept.	Boston
	W.J. Sands	Chief, Dept.	Quincy
	D.B. Tierney	Chief, Dept.	Arlington
	S.R. Allen	Chief, Dept.	Brookline
	H.E. Gutheim	Chief, Dept.	Cambridge
REGION VI.	F.F. Dickinson	Chief, Dept.	Brockton
	E.B. Wood	Chief, Dept.	Plymouth
	C.P. Inkley	Chief, Dept.	Rockland
REGION VII.	R.D. Wells	Chief, Dept.	Falmouth
	W.K. Thacher	Chief, Dept.	Hyannis
	J.T. Wallace	Chief, Dept.	Bourne
REGION VIII.	E.F. Dahill	Chief, Dept.	New Bedford
	G.E. McGaw	Chief, Dept.	Fall River
	E.F. Gorey	Chief, Dept.	Taunton
REGION IX.	R.M. Tappin	Chief, Dept.	Gardner
	M.J. Shea	Chief, Dept.	Fitchburg
	E.L. Smith	Chief, Dept.	Athol

This board in each of the respective regions has organized their respective co-ordinating groups for the proper administrations of the provisions of this order.

Under the provisions of paragraph 16 of this order, the following men have been appointed members of the Advisory Fire Mobilization Board:

Percy C. Charnock, Fire Co-ordinator Massachusetts Committee on Public Safety	Medford
William Arthur Reilly, Fire Commissioner	Boston
Stephen C. Garrity, State Fire Marshal	Lowell
Raymond J. Kenney Commissioner of Conservation	Belmont
Selden R. Allen, Chief, Fire Department	Brookline
Daniel B. Tierney, Chief, Fire Department	Arlington
John W. O'Hearn, Chief, Fire Department	Watertown

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In this group are the orders that grant authority to the departments of the state government to carry on certain activities. Authority is also granted to the U.S. government and the inhabitants of the state to undertake a variety of actions subject to certain regulations. These orders relate to a variety of subjects and are examined as to content in a chronological rather than in a subject order.

Executive Order No. 2 of the thirty-first of December, 1941, was asked for by the President of the U.S. It orders the Director of the Division of Employment Security of this State to deliver to the U.S. Employment Service all his records that the Federal government agency may desire. Also all supplies, forms, telephone service, lights, heat, office space and equipment and all other available services and facilities he may have.

Executive Order No. 4 of February 17, 1942, relaxes license restrictions on automobile dealers. It allows those dealers whose business is primarily the selling of new cars to sell second-hand cars under the same regulations that governs dealers of second-hand automobiles.

Executive Order No. 5 of February 18, 1942, allows the Commissioner of Labor and Industries to set aside the General Laws when they would obstruct or delay the production, processing or transportation of materials which are related to the war effort. To be done only when written application is filed for the suspension.

Executive Order No. 6 delegates to the Department of Public Utilities the authority to suspend those provisions of the General Laws that prohibit transporting, loading, unloading or other handling of supplies, materials, and food stuffs on the Lord's Day. To be set aside only when the action taken relates to the war effort. This order was decreed on March 16, 1942.

Executive Order No. 9 of March 25, 1942, allows the Division of Personnel and Standardization to change the classification of State employees at the State Farm at Bridgewater in order to give them a raise in pay. This order was issued to cover a dead spot in the law which prevents this division from changing classifications during a certain period of the year when the budget is being considered by the legislature. It is now a dead letter.

Executive Order No. 11 of April 25, 1942, gives the Department of Public Utilities power to issue special licenses without a public hearing, to any owner of vehicles for the purpose of carrying passengers. To be done only when this department decides that such a condition exists to warrant the same. This department is also to cooperate with the Office of Defense Transportation, a Federal agency.

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Executive Order No. 13 of May 11, 1942, issued at the request of the Navy Department closes the State pier in the town of Bourne. The Public Works Department is given authority to take this action.

Executive Order No. 18 dated May 26, 1942, gives the Commissioner of Insurance power to allow any insurance company to issue insurance policies in accordance with the "War Department Insurance Rating Plan" in connection with "Cost plus a Fixed Fee" contracts on projects whose cost is borne by the Government of the United States or its agencies.

Executive Order No. 19 of May 28, 1942, authorizes the Commissioner of Public Works to issue regulations, with the Governor's approval to relax or suspend the laws with respect to the maximum height, width and length of motor vehicles and trailers. Also, vehicles registered in other states doing war work in this state do not have to take out Massachusetts plates and insurance provided this holds for Massachusetts vehicles doing the same in those states.

Executive Order No. 21 of June 9, 1942, says that a motor vehicle registered for purposes other than carrying persons for hire may be operated and used as a "Workmen's Livery Automobile" without being registered as such. Such a vehicle is defined as an ordinary motor vehicle, passenger or station car type. The

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Commissioner of Insurance is empowered to permit the insurance companies lawfully issuing motor vehicle liability insurance policies to extend, without charging additional premiums therefor, the insurance coverage afforded by policies issued under the compulsory motor vehicle insurance law, in order that the coverage will provide insurance protection to all motor vehicles as Workmen's Livery Automobiles.

Executive Order No. 23 of June 19, 1942, suspends the declaration and payment of extra dividends by savings banks and co-operative banks. Savings Banks can pay these dividends on the authorization of their boards of trustees and the approval of the Commissioner of Banks.

Executive Order No. 25 of June 29, 1942, allows the Commission of Correction to produce and sell the products of inmates in the prisons of the State, for the prosecution of the war.

Executive Order No. 26 of July 6, 1942, permits the Director of the Division of Employment Security to divulge information to the War, Navy and Justice Departments when they request it in writing.

Executive Order No. 28 of July 9, 1942, allows the War Damage Corporation to issue insurance without complying to state laws that the Commissioner of Insurance sets aside.

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Executive Order No. 29 of July 9, 1942, gives the Commission on Administration and Finance the power to purchase insurance protection for the real and tangible property of the state in any amount it deems advisable to the War Damage Corporation subject to the Governor's approval.

Executive Order No. 33 of August 27, 1942, gives the chairman of the Industrial Accident Board power to designate, with the Governor's approval, a person not in the employ of the Board to serve as a Board member.

Executive Order No. 36 allows the employing of children fourteen years or over for the purpose of harvesting apples, cranberries, and other crops. Strict rules are laid down for this employment and forms authorizing this work shall be prescribed by the Commissioner of Education and may contain other protective regulations.

Executive Order No. 37 of October 19, 1942, allows the payment of a portion of the premiums on liability and casualty policies issued by Insurance companies for the year 1942 before the first of January, 1943. All subject to the regulations and rules of the Commission of Insurance.

Executive Order No. 38 of November 18, 1942, gives the Commissioner of Public Welfare with the approval of the United States Government to assist enemy aliens and in doing so may
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incur obligations in the name of the state in which he thinks the United States will reimburse it.

Executive Order No. 39 of November 23, 1942, allows the registration of vehicles of persons in the armed forces in the name of the father or mother, wife or husband, sister or brother, or child eighteen years or over. Persons not bearing relationship to the owner must show a written authorization to the Registrar of Motor Vehicles.

Executive Order No. 41 of December 1, 1942, says that the Chairman of the Industrial Accident Board may appoint, with the Governor's approval, a person not in the employ of the Board to be a member of the Board.

Executive Order No. 51 of January 6, 1943, allows the State Superintendent of Buildings to make contracts with the Boston Edison Co. to supply the State House with electric current and steam heat. Rates to be approved by the Commission on Administration and Finance.

Executive Order No. 7 of March 16, 1942, states that the definitions in the General Laws which relate to interpretation of statutes also hold forth for all executive proclamations issued by the Governor.

Executive Order No. 8 of March 16, 1942, limits speed of automobiles to 40 miles per hour. Vehicles and trailers must

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have safe tires. Registrar may inspect vehicles to see if the tires are in safe condition.

Executive Order No. 12 of April 27, 1942, allows persons to have open air fires during the months of April and May for the purpose of burning old automobile bodies in order to make scrap available. Fire permits are necessary to conduct such fires.

Executive Order No. 20 of June 9, 1942, gives chaplains in the armed forces the power to solemnize marriages provided that at least one of the parties to any such marriage is a member of the armed forces.

Executive Order No. 32 of August 20, 1942, states that the place of resident of a member of the armed forces since September 16, 1940, shall be deemed to be that place from which he went to the armed forces. This was promulgated in order to give assistance to the dependents of said members.

Executive Order No. 34 of September 3, 1942, was requested by the Navy Department and it permits the Department of Public Works to change the route of the State highway between Hingham and Weymouth and to make plans for a new bridge over the Weymouth Back River. The construction and cost of the bridge shall be borne by the Navy Department.

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Executive Order No. 35 of September 11, 1942, amends Executive Order No. 8. Automobiles are not to be operated faster than thirty-five miles per hour.

Executive Order No. 42 of December 1, 1942, opens all State offices located in the State House at 8:15 and closes them at 4:15, to be closed all day Saturday, Sunday and Holidays.

Executive Order No. 46 of January 4, 1943, regulates the sale of fuel oil. Domestic heating oil or kerosene or range oil shall be sold, transferred, delivered, or given away within or without the Commonwealth of Massachusetts, unless such person has been a regular user of such oil.

Executive Order No. 48 of January 5, 1943, allows the use of "ride-sharing automobile" without the payment of additional fees.

Executive Order No. 53 of March 8, 1943, allows the keeping of petroleum products in large quantities by the U.S. Government and its agencies, without Public hearing, in any part of the State. The approval of the State Fire Marshall and the Commissioner of the State Department of Public Safety must be obtained.

The Metropolitan District Commission, a unit of the state government that lies between the Cities and Towns around Boston and the State, has been granted specific authority to undertake certain activities. The following are the three orders that relate to it.

Executive Order No. 17 of May 22, 1942, stated that upon

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application of the General Electric Co. of Lynn, Massachusetts the Commission is authorized to extend and connect its water supply system to the pipe system of the "Gear Plant" of the said General Electric Co. With the Governor's approval, rates are to be mutually agreed upon and the cost of construction for the connection between the two systems is to be borne by the company.

Executive Order No. 24 of June 19, 1942, called for practically the same thing only this time it was the extension of the sewerage system to the Bethlehem Steel Company's plant at Hingham, Mass. The third order, numbered 43, calls for the extension of the water supply system of the Metropolitan Commission to any industrial plant or establishment asked for by the United States government and the operators or owners of such plants. All costs for such connections are to be paid for by the industry. Any connections made to any of the above named plants and to be made to others does not make such plants a part of the Metropolitan District Commission.

The Counties, Cities, and Towns of the State have been granted certain power by the following executive orders.

Executive Order No. 14 of May 15, 1942, allows the proper authorities in cities and towns to restrict or close any public way within its jurisdiction for the purpose of better protecting

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defense establishments.

Executive Order No. 16 of May 22, 1942, gives cities and towns the power to sell any junk they have that is of no use to the said cities and towns.

Executive Order No. 27 of July 6, 1942, permits districts, counties, cities and towns to set aside the provisions of the General Laws that require publication of notices for bids for the purchase of supplies when said supplies to be purchased is fuel.

Executive Order No. 44 of December 16, 1942, allows the official having charge of payrolls in the Commonwealth or any of its political sub-divisions to hold back any amount of the pay of every employee that may be required by sub-chapter D of the Internal Revenue Code inserted by section 172 of the Revenue Act of 1942.

Executive Order No. 49 of January 6, 1943, gives permission to districts, counties, cities, and towns to set aside the bid requirements for the purchase of supplies when said supplies are required for the conversion of an oil burning heating system to a coal burning system or to the purchase and installations of any heating system other than oil.

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In his report, the Attorney General says,[45]

"In my judgment the machinery above outlined has been successful in enabling the Commonwealth to meet expeditiously some of the rapidly changing conditions presented by total war. I believe that Executive Orders have been confined to subjects with which they were intended to deal and that those promulgated to date constitute a body of wartime laws which have reasonably been kept from becoming a part of the organic law of the Commonwealth and which, therefore, may be readily discarded when the emergency is over. His Excellency Governor Saltonstall, as Chief Executive, has exhibited a scrupulous desire to confine the exercise of his extraordinary powers to the purpose for which they were intended. Nevertheless, the success of the machinery up to the present time should not obscure the fact that it is essentially dangerous, should be guarded against undue extension, and should be terminated at the earliest possible moment after the war."

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45 Report Attorney General, p. 12, Ref. II

Many of these orders call for the setting aside of some of the provisions of the General Laws of the Commonwealth. It will not be possible to enumerate each and every law so set aside, but the summary of a few of them will give the reader some idea as to their content and scope.

Executive Order No. 27 sets aside all provisions of the law which require the execution of a written contract or the posting of an advertising in a newspaper or any other publication of a notice asking for bids for the purchase of supplies by the counties, cities, and towns or districts of the state when such a supply to be purchased is fuel oil. It then states that the provisions of the General Laws (Ter. Ed.), Chapter 34, Secion 7, Chapter 43, Section 28, and the provisions of any other law, charter, ordinance or by-law, in so far as they are inconsistent with the order, are also to be suspended. Chapter 34 deals with the powers and duties of county commissioners and the section of this chapter set aside (34) describes in detail the requirements to be met on all contracts over eight hundred dollars. Chapter 43 deals with cities and the section set aside (28), like the one above, lays down the specifications to be demanded on all contracts over five hundred dollars. The above sections are also made inactive by Executive Order No. 49 when the supplies to be purchased are necessary for the conversion of an

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oil burning heating system to a coal burning heating system or to the purchase and installation of any heating system designed to burn fuel other than fuel oil.

Executive Order No. 6 gives the Department of Public Utilities power to issue permits for persons to handle, load and unload supplies, materials and foodstuffs on the Lord's day as long as such handling relates to the war effort. It calls for the non-application of Chapter 136, Section 5 of the General Laws to persons acting under such permits. Section 5 of said chapter states that:

> "Whoever on the Lord's day keeps open his shop, warehouse or workhouse, or does any manner of labor, business or work except works of necessity and charity, shall be punished by a fine of not more than fifty (50) dollars."

Executive Order No. 29 empowers the Commission on Administration and Finance to purchase insurance protection offered by the War Damage Corporation (a federal government agency) on the real and personal property of the State up to any amount it deems advisable subject to the approval of the governor. The provisions of Chapter 29, Section 30, are set aside. It states that,

> "No officer or board shall insure any property of the Commonwealth without special authority of law."

Executive Order No. 20 allows chaplins of the United States military forces to solemnize marriages while they are in the state and as long as one of the parties to be married is a member of the armed forces. The provisions of Chapter 207 of the General Law are to apply in such a case except where they are inconsis-

tent are those from 38 to 44 which state who has the power to solemnize marriages.

Executive Order No. 17 allows the Metropolitan District Commission to connect its water system to that of the "Gear Plant" in Lynn, Massachusetts, and it states that Chapter 92, Section 10 is not to apply. This section defines the Metropolitan Water District--its boundaries and its duties. This also applies to Order No. 43 which gives the M.D.C. power to extend its sewerage system to the Bethlehem Company's plant in Hingham, Massachusetts. Both orders also state that Chapter 727 of the Acts of 1941 is not to be considered. This chapter enumerates additional conditions and qualifications for membership in the Metropolitan District Commission (Water District)

Executive Order No. 51 allows the State Superintendent of Buildings to make contracts with the Boston Edison Company for it to furnish electric current and steam heat to the State House. Time and rates so made must be approved by the Commission on Administration and Finance. It then states that all provisions of Chapter 29 of the General Laws that are inconsistent with this order are set aside. This Chapter relates to the various ways in which state finance is to be conducted.

Both Executive Orders No. 33 and 41 allow the chairman of the Industrial Accident Board to appoint members to the board

who are not employed by the board, with the governor's approval, to fill the place of members who are now serving in the armed forces of the United States. All of the requirements of Chapter 708, Section 7, are to remain in force except the provision which states that such persons appointed are to be members of the board.

It seems to be quite evident that the laws set aside by these orders are specifically related to the content of the order which sets them aside. There has been no abrogation of any of the important laws that relate to a person's freedom and privileges. As stated in the Attorney-General's report, the governor has been very careful in issuing orders and laws which they rescind. Whether he contemplates setting aside any of the more fundamental laws of the State can only be determined by the days to come.

CONCLUSIONS

There were three periods from 1780 to 1918 in which the governor of the Commonwealth of Massachusetts was confronted with an emergency arising out of a war engaged in by the federal government.

During such emergencies, the governor had great constitutional power to put the inhabitants in a warlike posture and to prepare them in every way for the defense of the state.[1] Upon reading this provision, one might easily presume that in itself it gave the governor sufficient authority, by its delegation and wording, to take any action pertinent to defense. The general-court in its first session in 1780 also seemed to think that the governor with his council had all the necessary power to act when it was not in session.[2] However, in a period of months[3] this same body changed its mind and enacted a statute[4] giving the governor with his council power to take any action for defense he deemed necessary in the three eastern counties of the state when the general-court was not in session.

What actually was done under the authority of this act is not revealed, perhaps nothing. It would seem to be an approval of any action the governor might take by telling him that when he thought it was necessary he could take such action. It should be kept in mind that such measures were to be taken only in a certain

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1 Constitution of Massachusetts, Chapter II, Section I, Art. VII
2 Acts of 1780, Chapter 105, October Session
3 October, 1780 to January, 1781
4 Acts of 1780, Chapter 247, January Session

section of the state. The general-court said in the act that it was investing extraordinary power in the governor. I am of the opinion that the governor, without this, act could have taken any such action.

With the same constitutional power, the governor in 1861 undertook measures for defense without statutory enactment. Of course, he had to have money to do this, and he received such[5] through an emergency appropriation by the general-court, which would seem to constitute an approval that what he was doing or was going to do was within his power. After he had undertaken such defensive steps, he received statutory approval[6] of his action and an expression that he was given the authority to do the same. His constitutional power limited him in sending troops outside of the state,[7] unless he had their approval or that of the general-court. In this statute, he received that of the general-court.

At the same time, another law[8] gave him certain powers relating to state finances. This was considered a measure relating to the war effort.

Like the situation in 1780, I believe that the governor had adequate constitutional power for his actions. The action of 1861 taken by the governor was strictly related to the military and its functioning. This fact seems to be an added proof that

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5 Hart, (Pearson), Vol IV, p. 510, Ref. VI
6 Acts of 1861, Chapter 216, Extra Session
7 Second Paragraph of Article VII
8 Acts and Resolves of 1861, Chapter 217, Extra Session

the governor acted within the limitations of his power. The provision states that the governor can prepare and control the military in various ways and that he is their commander-in-chief.

The position of the state government in its relationship to the federal was different in 1861 from that of 1780. In the earlier period, it was not bound to the limitations imposed upon it by a federal constitution other than its commitments to the Second Continental Congress. Its actions in this period in regard to defense would have been greater in scope than in 1861. However, in both periods the raising of an army and its allied problems were considered to be the business of the state governments. The infiltration of the federal government on this aspect of warfare could be noticed in the Civil War period.[9] That it took full control is noticed by the type of defense measures the state government adopted in 1917 and 1941-42. The situation in 1917 caused the governor to prepare for defense through the creation of an Executive Committee known as the Committee on Public Safety.

As the problem of the military was in the hands of the federal government and as the size and scope of war had greatly increased, the nature of state defense had changed. Still possessing the same constitutional power, the governor came to the conclusion that he lacked enough authority to mobilize the state.

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9 The drafting of men and Chapter 9, Section 4, July, 1861, Acts of the XXXVII Congress

He asked[10] for and received[11] such power from the general-court. The statutes gave the governor dictatorial power. Mobilization was definitely that of the civilian and his government.

The governor had the power to seize almost any kind of real or personal property for the execution of the war, also power over food as to its distribution, production, use and price. Hours of labor were allowed to be set aside, and he could delegate the authority given to him under this act to others as he did to the Massachusetts Committee on Public Safety. The courts could refuse bail in certain cases. These, indeed, were extraordinary powers. The question of their constitutionality was never raised in the courts. One writer[12] thinks that they are powers that were contrary to the precedence of state constitutional legislation but were accepted by patriotic citizens as necessary measures for the better prosecution of the war.

In brief, it can be said that in these three periods the governor had great constitutional power to take defense action but was always given statutory power for such action.which in each period increased in the delegation it gave to the governor. The problem of defense as to type and scope was different in 1917 than in the earlier periods. The federal government is increasing its control over defense both nation and local. In the latest crisis, the constitutional power of the governor to act in time

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10 Long,p. 191, Ref. VIII
11 Acts of 1917, Chapter 342
12 Hart, (Sherbourne), p.606, Vol. V, Ref. VI

of emergency is no where near as great as it had been in these three earlier periods.[13] This has not encumbered the governor in mobilizing the state for defense.

The theory under which most states have setup their respective state agencies is that the problem of defense from external agression is primarily the problem of the federal government and that of internal mobilization and preparation is in the hands of the state government. Massachusetts was no exception. The governor, following the precedents of his 1917 predecessor, setup a Committee on Public Safety to function along the same lines of the earlier body. The legislature gave him extraordinary[14] power following along the lines of the 1917 statute. It went further and gave him all the power that it constitutionally could give him as commander-in-chief of the armed forces and as supreme executive magistrate of the state over all persons and property within the state. Without limiting any of this authority, it specifically enumerated that which he could control.

There are many things so enumerated that the federal government has taken control of; such as, food and transportation. It is quite unlikely the governor will try to contravene federal action in such matters but rather under this power supplement it when it appears to be weak.

A most important feature is the provision allowing the governor to set aside laws of the general statutes of the Commonwealth if they are in conflict with his regulations or orders.

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13 See Article LIV of the Constitution of Massachusetts
14 Chapter 719, Acts of 1941

This would seem to be constitutional as Article 20 states that:

> "The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislative shall expressly provide for."[15]

The governor has set aside provisions of the general laws by his orders but up to April, 1943, they have been laws of detail and regulations rather than any of those of a more fundamental nature that effect people more directly. Evidence seems to point in the direction that the governor will use moderation in setting aside laws.

Like the 1917 statute, the constitutionality of the 1941-42 statutes have not been contested in the courts. The attorney-general in his reports[16] thinks that they are powers that are incompatible and inconsistent with a democratic form of government but necessary for the prosecution of the war.

If there is the slightest possibility of these statutes being unconstitutional in peace time, then they are unconstitutional in time of war. Unlike the federal constitution, as far as I know, there is no implied war powers in the state constitution. If there were, they definitely would have been in the constitution provision mentioned throughout this section and which was amended in 1918 by a weaker provision.[17]

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15 Article XX of the Constitution of Massachusetts
16 Report (Attorney-General), pp. 10-12, Ref. II
17 Article XX

It has become a question of practical expediency. If at any time in the present or in the future the general-court thinks it necessary to give the governor extraordinary power to meet a war emergency, your author is of the opinion that such power and authority will be given regardless of constitutional limitations. The question of constitutionality will not be pressed, and if so, a decision will not be rendered by the courts until after the passing of the crisis that caused the enactment of such laws.

ABSTRACT

The Revolutionary War saw the establishment of committees of safety and correspondence in the colonies for the purpose of organizing the citizens against the British. This, the committees did very effectively, and some of them went further. In Massachusetts, the Committee on Safety became the administrative arm of the Provincial Congress in carrying on the war and exercising the powers of government.

Under the Constitution of 1780, the governor was given considerable power to take action for the defense of the state in times of trouble caused by war. The General Court, however, decided to give the governor extraordinary power to act, when it was not in session, for the defense of the eastern part of the state. As the war had swung to the south, it was never necessary for the governor to exercise authority under this law.

The Civil War brought about an emergency which was met by the governor in a very vigorous manner. He took very positive steps in calling up and organizing the militia and sending it to Washington and other points. Although, he still had the constitutional power of his predecessor of revolutionary days, the General Court decided to give him an approval for the action he had taken. It also gave him the authority to organize, equip, transport and render subsistence for any part of the state military. The governor was authorized to issue a state currency on the credit of the state and to pay state soldiers in Federal service.

World War I caused the governor to organize a Committee on Public Safety to which many tasks were entrusted. It organized many of the civilian functions of the state for the purpose of bettering the national defense. Believing that he did not have enough power to completely organize the state for an all-out-defense, the governor requested the General Court to give him emergency power. The legislature answered this request by passing the "Commonwealth Defense Act". By this act, he was empowered, with the consent of his council, to seize property, fuel, food and other things. It almost gave him supreme military powers for the duration of the war. Courts were allowed to refuse bails. In certain cases, the governor also had the power to control food as to distribution, price and making land available for production. Labor was also brought under control.

The war with the axis powers in 1941 found the Commonwealth with a Committee on Public Safety already established. According to the governor, it was to function along the same lines as that of 1917, and like its predecessor, it organized the civilian population of the state. This Committee was entrusted with the added tasks of providing a civilian defense against air attack.

The General Court had also responded. It had given the governor, by statute, great power to control the state and its resources in times of an emergency. Parts of it were copied from the 1917 statute. It did not, like the former statute,

give the governor power to control foods as to distribution and price. It was after the declaration of war that the General Court passed an additional law which gave to the governor, as supreme executive magistrate and commander-in-chief, all the power that it could possibly do over persons and property within the state. The governor has carried out his authority under these statutes through the issuing of "Executive Orders". From December, 1941, to March, 1943, there were fifty-three such orders promulgated covering a variety of subjects. These orders, as provided for by the emergency statutes, set aside any law of the General Laws, City Ordinances, Rules, Regulations and the like that are inconsistent with them.

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APPENDICES

CHAPTER 719

AN ACT TO PROVIDE FOR THE SAFETY OF THE COMMONWEALTH IN TIME OF MILITARY EMERGENCY.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is immediate further preparation for the defense of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

Be it enacted, etc., as follows:

PART I

MASSACHUSETTS EMERGENCY COMMISSION.

SECTION 1. The governor may appoint an unpaid commission to be known as the Massachusetts emergency commission for the purposes stated in this act. Said commission shall include such department heads and other officers of the commonwealth as the governor may deem necessary, and the executive director of the governor's committee on public safety. The governor shall appoint the chairman of said commission to serve during his pleasure. Said commission shall be in the executive branch of the government, shall serve under the governor and shall be subject to his supervision and control. Said commission shall assist the governor in carrying out and enforcing the provisions of this act and the orders, rules and regulations made thereunder.

SECTION 2. Said commission may employ subject to the approval of the governor and, subject to the approval of the commission on administration and finance, fix the compensation of such executive officers, and such technical, clerical, stenographic and other personnel as it deems necessary to carry out the duties set forth in this act. Such compensation shall be commensurate with that for like positions within the classified service.

SECTION 3. Said commission may prescribe distinguishing marks or insignia to distinguish persons engaged in civilian defense activities, and may designate by rule or otherwise what persons may wear such marks or insignia. No such marks or insignia shall in any way conflict with, or so resemble as to be confused with or mistaken for, military or naval or police or fire department uniforms or badges. Any person who without authority wears any such marks or insignia or any simulation thereof or ones designed to be confused therewith shall be punished by a fine of not less than five nor more than one hundred dollars.

SECTION 4. In order to train the civilian population against air raids and other vicissitudes of modern warfare, the mayor and city council in cities and the selectmen in towns may at such time or times as may be approved by said emergency com-

mission, and pursuant to such rules and regulations as it may from time to time issue, conduct practice blackouts, air raid warnings and other civilian defense activities. The plan and orders for any such practice activity shall be submitted to said commission for its approval and, as approved or modified by said commission, shall be prominently published in the particular city or town at least seven days before the practice activity is to take place. Any person who shall wilfully violate any order approved and published as aforesaid shall be punished by a fine of not less than five nor more than twenty-five dollars.

SECTION 5. (a) The mayor and city council in cities and the selectmen in towns, or such other persons or bodies as are authorized under existing laws to appoint firemen or policemen, may appoint, train and equip volunteer, unpaid auxiliary firemen and auxiliary police and may establish and equip such other volunteer, unpaid public protection units as may be approved by said commission and may appoint and train their members. Chapters thirty-one, thirty-two and one hundred and fifty-two of the General Laws shall not apply to persons appointed hereunder.

(b) Cities and towns may by ordinance or by-law, or by vote of the aldermen, selectmen, or board exercising similar powers, authorize their respective police departments to go to aid another city or town at the request of said city or town in the suppression of riots or other forms of violence therein, and, while in the performance of their duties in extending such aid, the members of such departments shall have the same powers, duties, immunities and privileges as if performing the same within their respective cities or towns. Any such ordinance, by-law or vote may authorize the head of the police department to extend such aid subject to such conditions and restrictions as may be prescribed therein. Any city or town aided under and in accordance with this section shall compensate any city or town rendering aid as aforesaid for the whole or any part of any damage to its property sustained in the course or rendering the same and shall reimburse it in whole or in part for any payments lawfully made to any member of its police department or to his widow or other dependents on account of injuries or death suffered by him in the course of rendering aid as aforesaid or of death resulting from such injuries.

(c) The head of the fire or police department of any town or city of the commonwealth shall, after the issuing of any proclamation provided for in section six (a), order such portion of his department, with its normal equipment, as the governor may request, for service in any part of the commonwealth where the governor may deem such service necessary for the protection of life and property. When on such service, police officers and firemen shall have the same powers, duties, immunities and privileges as if they were performing their duties within their respective cities or towns. The commonwealth shall compensate any city or town for damage to its property sustained in such ser-

vice and shall reimburse it for any payments lawfully made by it to any member of its police or fire department or to his widow or other dependents on account of injuries sustained by him in such service or of death resulting from such injuries.

PART II.

EMERGENCY POWERS OF THE GOVERNOR.

SECTION 6. (a) If and when the Congress of the United States shall declare war, or if and when the President of the United States shall by proclamation or otherwise inform the governor that the peace and security of the commonwealth are endangered by belligerent acts of any enemy of the United States or of the commonwealth or by the imminent threat thereof, the governor may, with the advice and consent of the council, issue a proclamation or proclamations setting forth a state of emergency.

(b) Whenever the governor has proclaimed the existence of such a state of emergency, he may employ every agency and all members of every department and division of the government of the commonwealth to protect the lives and property of its citizens and to enforce its laws. Any member of any such department or division so employed shall be entitled to the protection of existing applicable provisions of law relative to any type of service of the commonwealth in emergencies.

(c) After such proclamation has been made, the governor may, in the event of any disaster or shortage making such action necessary for the protection of the public and with the approval of the council, take possession: (1) of any land or buildings, machinery or equipment; (2) of any horses, vehicles, motor vehicles, aeroplanes, ships, boats or any other means of conveyance, rolling stock of steam or electric railroads or of street railways; (3) of any cattle, poultry and any provisions for man or beast, and any fuel, gasoline or other means of propulsion which may be necessary or convenient for the use of the military or naval forces of the commonwealth or of the United States, or for the better protection or welfare of the commonwealth or its inhabitants. He may use and employ all property of which possesants. He may use and employ all property of which possession is so taken, for such times and in such manner as he shall deem for the interests of the commonwealth or its inhabitants, and may in particular, when in his opinion the public exigency so requires, sell or distribute gratuitously to or among any or all of the inhabitants of the commonwealth anything taken under clause (3) of this paragraph. He shall, with the approval of the council, award reasonable compensation to the owners of any property of which he may take possession under the provisions of this section, and for its use, and for any injury thereto or destruction thereof caused by such use.

(d) Any owner of property of which possession has

been taken under paragraph (c) to whom no award has been made, or who is dissatisfied with the amount awarded him by the governor, with the approval of the council, as compensation, may file a petition in the superior court to have the amount to which he is entitled by way of damages determined. The petitioner and the commonwealth shall severally have the right to have such damages assessed by a jury upon making claim in such manner as may be provided by law or by the rules of said court.

(e) Such petition may be filed in the county in which the petitioner lives or has his usual place of business, if the petitioner lives or has a usual place of business in the commonwealth, otherwise in the county of Suffolk. The petition shall be brought within one year after the date when possession of the property was taken under paragraph (c), except that if the owner of the property is in the military or naval service of the United States at the time of the taking, it shall be brought within three years after said date. Except as is otherwise provided herein, such petition shall be heard and determined in accordance with the provisions of chapter two hundred and fifty-eight of the General Laws.

(f) Upon such petition, full damages shall be awarded whether or not the same had fully accrued at the time of the filing of the petition, and, whenever necessary, the hearing on the petition shall, on the application of either the petitioner or the commonwealth, be continued for assessment of damages until the same are fully ascertained.

SECTION 7. The governor shall have full power and authority to co-operate with the federal authorities and with the governors of other states in matters pertaining to the common defense or to the common welfare, and also so to co-operate with the military and naval forces of the United States and of the other states, and to take any measures which he may deem proper to carry into effect any request of the President of the United States for action looking to the national defense or to the public safety.

SECTION 8. (a) After any proclamation provided for in section six (a) shall have been made, the governor may whenever he considers that the public safety so requires, make such orders or regulations for air raid precautions and for the preservation of life and property as he may determine to be advisable, and may appoint such persons as he deems necessary to carry out said orders and regulations.

(b) So far as necessary to insure that blackouts or other civilian defense measures established by the governor under any regulations provided by him shall be effective and complete, the provisions of orders made under this section during the period for which they are in force shall supersede any laws, rules, regulations, ordinances or by-laws to the extent that

they are inconsistent therewith. Any person authorized to enforce such orders or regulations may call upon any police officer for assistance in the enforcement thereof. In order to render any order or regulation established under this section effective, and in order more fully to provide for the protection of life and property within the commonwealth, the governor may take over the control of any public property, real or personal, during the periods of such blackouts, and may delegate the power to take such control to any persons designated by him in such orders or regulations.

(c) Any violation of any order or regulation made under this section shall be punished by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or both.

SECTION 8A. The provisions of this act and the powers granted hereunder shall take effect and be exercised only in so far as they do not contravene any law of the United States or the exercise of any lawful power by the President.

SECTION 9. If any part, subdivision or section of this act shall be declared unconstitutional, the validity of the remaining parts thereof shall not be affected thereby.

SECTION 10. This act may be cited as the Commonwealth Emergency Defense Act of 1941.

SECTION 11. This act, except as otherwise provided herein, shall remain in force until February first, nineteen hundred and forty-three or until the governor, with the advice and consent of the council, proclaims that the emergency is ended, whichever first shall occur; provided, that the emergency powers given to the governor by sections six, seven and eight under any proclamation shall expire sixty days after the making of such proclamation unless before that time the general court has ratified and approved the same.

SECTION 12. For the purpose of carrying out the provisions of this act, such sums as may be necessary may be expended from the amount appropriated by item 0401-33 of section two of chapter four hundred and nineteen of the acts of the current year and subject to the provisions contained in said item. After the end of the fiscal year ending November thirtieth, nineteen hundred and forty-two and until the general court provides otherwise, the Massachusetts emergency commission may, subject to the provisions of said item 0401-33, incur liabilities, in any month, not in excess of the largest monthly expenditure during said fiscal year.

Approved October 30, 1941.

CHAPTER 3

AN ACT MAKING THE EFFECTIVE PERIODS OF CERTAIN EMERGENCY ACTS PROVIDING FOR THE SAFETY OF THE COMMONWEALTH CO-TERMINOUS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is the continuing in effect without interruption of certain provisions of law providing for the safety of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

Be it enacted, etc., as follows:

Chapter seven hundred and nineteen of the acts of nineteen hundred and forty-one is hereby amended by striking out section eleven and inserting in place thereof the following section:-- Section 11. This act shall be in effect during the continuance of the existing state of war between the United States and any foreign country; provided, that this act shall cease to be in effect upon the earlier adoption by both branches of the general court of a joint resolution stating that it is no longer necessary for the public good and safety.

Approved January 28, 1943.
ACTS OF 1943

CHAPTER 6

ACTS OF 1942 (SPECIAL SESSION)

An Act terminating the existence of the Massachusetts Emergency Commission and transferring its powers and duties to the governor's committee on public safety.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide immediately for more simplified control of defense measures during the existing state of war, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health safety and convenience.

Be it enacted, etc., as follows:

The existence of the Massachusetts Emergency Commission is hereby terminated, and the powers and duties of said commission shall hereafter be exercised and performed by the governor's committee on public safety, which is hereby authorized to act by and through an executive committee chosen by it in such manner as it may determine. The executive director of said committee shall file with the State Secretary a list of the members of said executive committee as constituted from time to time. All members and employees of said governor's committee shall be citizens of the United States or of an Allied Nation.

Approved January 31, 1942

CHAPTER 13

AN ACT TO PROVIDE FOR THE SAFETY OF THE COMMONWEALTH DURING THE EXISTING STATE OF WAR.

Whereas, The supreme emergency of a world wide war, following the declarations of war by the congress of the United States, has resulted in conditions of imminent danger, incident to such a war, to the lives and property of the citizens of the United States and of each state and to the respective governments of the people of the states and nation, calling for a state of preparedness to meet such dangers by the commonwealth and its representatives promptly under changing conditions from time to time, so that the sovereign authority of the commonwealth and of its "supreme executive magistrate" and " commander-in-chief", for the protection of the government and its citizens and their property and interests, as recognized and established by the constitution in seventeen hundred and eighty and reserved to the commonwealth and its citizens by the tenth amendment to the federal constitution, may be exercised when needed for the support of the national government in the prosecution of the war and the protection of the commonwealth and its citizens; and

Whereas, It is necessary that this act become effective forthwith, in order to unify the sovereign powers of the commonwealth for the purpose of meeting the emergency, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and safety.

Be it enacted, etc., as follows:

SECTION 1. The action of the governor in making and issuing on December twenty-ninth, nineteen hundred and forty-one, his proclamation setting forth the existence of a state of emergency in this commonwealth, as authorized by Part II of chapter seven hundred and nineteen of the acts of nineteen hundred and forty-one, is hereby ratified and approved.

SECTION 2. During the effective period of this act, as set forth in section twelve, the governor, in addition to any other authority vested in him by law, shall have and may exercise any and all authority over persons and property, necessary or expedient for meeting the supreme emergency of such a state of war, which the general court in the exercise of its constitutional authority may confer upon him as the supreme executive magistrate of the commonwealth and commander-in-chief of the military and naval forces thereof, and specifically, but without limiting the generality of the foregoing, the governor shall have and may exercise such authority relative to any or all of the following:

(1) Health or safety of inmates of all institutions;
(2) Maintenance, extension or inter-connection of services of public utility or public service companies, including

public utility services owned or operated by the commonwealth or any political subdivision thereof;

(3) Policing, protection or preservation of all property, public or private, by the owner or person in control thereof, or otherwise;

(4) Manufacture, sale, possession, use or ownership of:

(a) Fireworks or explosives, or articles in simulation thereof;

(b) Means or devices of communication other than those exclusively regulated by federal authorities;

(c) Articles or objects (including birds and animals) capable of use for the giving of aid or information to the enemy or for the destruction of life or property;

(5) Transportation or travel on Sundays or weekdays by aircraft, watercraft, vehicle or otherwise, including the use of registration plates, signs or markers thereon;

(6) Labor, business or work on Sundays or legal holidays;

(7) Assemblages, parades or pedestrian travel, in order to protect the physical safety of persons or property;

(8) Public records and the inspection thereof;

(9) Regulation of the business of insurance and protection of the interests of holders of insurance policies and contracts and of beneficiaries thereunder and of the interest of the public in connection therewith;

(10) Vocational or other educational facilities supported in whole or in part by public funds, in order to extend the benefits or availability thereof;

(11) The suspension of the operation of any statute, rule or regulation which affects the employment of persons within the commonwealth when, and at such times as, such suspension becomes necessary in the opinion of the governor to remove any interference, delay or obstruction in connection with the production, processing or transportation of materials which are related to the prosecution of the present war;

(12) Regulation of the manner and method of purchasing or contracting for supplies, equipment or other property or personal or other services, and of contracting for or carrying out public works, for the commonwealth or any of its agencies or political subdivisions;

(13) Receipt, handling or allocation of money, supplies, equipment or material granted, loaned or allocated by the federal government to the commonwealth or any of its agencies or political subdivisions;

(14) Protection of depositors in banks, and maintenance of the banking structure of the commonwealth;

(15) Variance of the terms and conditions of licenses, permits or certificates of registration issued by the commonwealth or any of its agencies or political subdivisions;

(16) Regulating the sale of articles of food and household articles;

(17) Modification or variation in the classifications established under sections forty-five to fifty, inclusive, of

chapter thirty of the General Laws, as amended, and sections forty-eight to fifty-six, inclusive, of chapter thirty-five of the General Laws, as amended.

SECTION 3. The governor may exercise any power, authority or discretion conferred on him by any provision of this act or of said chapter seven hundred and nineteen by the issuance or promulgation of executive orders or general regulations, or through such department or agency of the commonwealth or of any political subdivision thereof, or such person, as he may direct by a writing signed by him and filed in the office of the state secretary. Any department, agency or person so directed shall act in conformity with any regulations prescribed by the governor for its or his conduct.

Whoever violates any provision of any such executive order or general regulation issued or promulgated by the governor, for the violation of which no other penalty is provided by law, shall be punished by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or both.

SECTION 4. Any provision of any general or special law, or of any rule, regulation, ordinance or by-law, to the extent that such provision is inconsistent with any order or regulation issued or promulgated under this act, shall be inoperative while such order or such last mentioned regulation is in effect; provided, that nothing in this section shall be deemed to affect or prohibit any prosecution for a violation of any such provision before it became inoperative.

SECTION 5. Notwithstanding the provisions of chapter thirty-one of the General Laws, or any other provision of law affecting civil service, and the rules and regulations made thereunder, the director of civil service, supported by a majority vote of the civil service commission, may:

(1) Approve or extend provisional appointments without time limitations until lists can be established or until appointments can be made from eligible lists;

(2) Extend temporary appointments which are made from civil service lists beyond the life of the list;

(3) Allow temporary transfers without regard to classification, beyond a period of six months;

(4) Restrict leaves of absence except for entrance into the armed forces of the United States, for illness, and for such other reason as said director deems to be in the public interest;

(5) Remove from eligible lists the names of individuals who refuse to accept positions which they have previously signified a willingness to accept; and

(6) Restore to the eligible lists the names of persons so removed; and

(7) Exclude from the operation of the civil service laws and rules and regulations any of the positions or employ-

ments in temporary agencies, boards or other governmental units of the commonwealth or of its political subdivisions, the existence and powers of which agencies, boards or other units are limited to a period terminating not later than one year after the termination of said war, or any lesser period.

Any appointment or transfer made under this section shall be effective only for the period during which this act is in effect.

SECTION 6, During any blackout or during the period between an air raid warning and the following "all clear" signal, regular and reserve members of police and fire forces of the commonwealth or of its political subdivisions, and members of the state guard and the armed forces of the United States while in uniform, may enter upon private property for the purpose of enforcing blackout or air raid precaution rules, regulations or orders issued by or under authority of the governor. Such members may at any time enter upon private property in compliance with written orders of the governor, for the sole purpose of enforcing laws, rules, regulations, ordinances or by-laws specifically set forth by the governor in such orders; provided, that nothing in this section shall be deemed or construed to prohibit any entry upon private property otherwise authorized by law.

SECTION 6A. Persons appointed to the auxiliary police force in a city or town pursuant to paragraph (a) of section five of said chapter seven hundred and nineteen shall exercise or perform such of the powers or duties of police officers as may be prescribed by the appointing authority; provided, that said powers or duties shall not be exercised or performed by them except while they are on active duty and displaying an authorized identifying badge or other insignia after being called to such duty by the head of the police force of such city or town to meet a situation which, in his opinion, cannot be adequately handled by the regular police force and by the reserve police force, if any, of such city or town. Auxiliary police in towns, but not in cities, may be authorized by the appointing authority to exercise the powers conferred by the provisions of section six of this act upon members of regular or reserve police forces of said towns.

SECTION 7. No person shall be civilly liable for any act done in pursuance of any provision of this act or of any order or regulation issued or promulgated thereunder, notwithstanding that such provision, order or regulation shall subsequently be determined to be invalid or unconstitutional. No city or town shall be liable for any damage sustained to person or property as the result of an authorized blackout.

SECTION 8. Any owner of property of which possession has been taken under paragraph (c) of section six of said chapter seven hundred and nineteen, to whom no award has been made or who is dissatisfied with the amount awarded him as compensation by the governor with the approval of the council, instead of proceeding

under paragraphs (d), (e) and (f) of said section, may have his damages determined under chapter seventy-nine of the General Laws.

SECTION 9. If any action under authority of any provision of this act or of said chapter seven hundred and nineteen except paragraph (c) of section six thereof, or any order or regulation issued or promulgated under any such provision, in itself constitutes an appropriation of property to the public use, compensation may be recovered therefor under chapter seventy-nine of the General Laws from the body politic or corporate appropriating such property.

SECTION 10. The provisions of this act and the authority granted hereunder shall be effective and be exercised only in so far as they do not contravene any law of the United States or the exercise of any lawful power by the president.

SECTION 11. If any section or subdivision of this act, or any application thereof, shall be held invalid, unconstitutional or inoperative, the remainder of this act, or other applications of such section or subdivision, shall not be affected thereby.

SECTION 12. This act shall be in effect during the continuance of the existing state of war between the United States and any foreign country; provided, that this act shall cease to be in effect upon the earlier adoption by both branches of the general court of a joint resolution stating that it is no longer necessary for the public good and safety.

Approved January 31, 1942.

CHAPTER 34, (TER.ED.), SECTION 17

All contracts exceeding eight hundred dollars in amount made by the commissioners for building, altering, furnishing or repairing public buildings, or for the construction or repair of public works, or for the purchase of supplies, shall be in writing and shall be filed with said commissioners or their clerk, and a copy of each such contract shall be filed in the office of the county treasurer. All changes in or additions to or agreements for extras under such contracts shall also be in writing and be so filed. All such contracts shall be made after notice inviting bids thereof has been posted for at least one week in a conspicuous place in each county building where the commissioners have an office and has been advertised at least three times in a newspaper, if any, published in the city or town wherein the public building, bridge, highway or public work or institution to be supplied in accordance with the contract is or is to be situated; otherwise in any newspaper of general circulation in the county. The Commissioners shall in each case make and file with the county treasurer a sworn certificate of such posting and advertising, but in an emergency, to the existence of which they shall certify upon the orders to the county treasurer for the payment of bills, they may contract for repairs without such posting or advertising. All bids shall be publicly opened in the presence of the commissioners and recorded in their records. No contract made in violation of this section shall be valid against the county, and no payment thereunder shall be made. The commissioners may, however, repair county buildings or other public works by day work, if in their judgment, expressed in a vote, the best interests of the county so require; but no bill therefore in excess of eight hundred dollars shall be paid by the county treasurer unless, upon or with the bill, the clerk of the commissioners has certified that such a vote is entered upon their records.

CHAPTER 43, (TER.ED.), SECTION 28

No contract for construction work or for the purchase of apparatus, supplier or materials, whether for repairs or original construction, the estimated cost of which amounts to five hundred dollars or more, except in cases of special emergency involving the health or safety of the people or their property, shall be awarded unless proposals for the same have been invited by advertisements in at least one newspaper published in the city once a week for at least two consecutive weeks, the last publication to be at least one week before the time specified for the opening of said proposals. Such advertisements shall state the time and place where plans and specifications of proposed work or supplies may be had and the time and place for opening the proposals in answer to said advertisements, and shall reserve to the city the right to reject any or all of such proposals. All such proposals shall be opened in public. No bill or contract

shall be split or divided for the purpose of evading any provision of this chapter.

ACTS, 1941, CHAPTER 708, SECTION 7

In case any officer of a department, division, board or commission of the commonwealth whose appointment is not subject to chapter thirty-one of the General Laws and whose duties are not otherwise authorized by law to be performed by another person, is unable to perform the duties of his office by reason of said military or naval service, the head of such department, division, board or commission to perform the duties of such officer during such service, but the person so designated shall have no authority to make permanent appointments or removals. Every such designation shall be subject to approval by the governor, and shall remain in force and effect until terminated by the return of the regular officer or employee or until revoked by the head of such department, division, board or commission, or by the governor. Any person who, while holding a position subject to said chapter thirty-one, is designated to perform the duties of another as provided in this section shall have and retain all his rights under said chapter thirty-one, including seniority, and when such designation ceases to be in force and effect he shall be reinstated without examination in the position previously held by him. Any appointment, promotion or transfer of any person to perform the duties of a person so designated shall be temporary and shall not extend beyond the date when such designation ceases to be in force and effect.

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